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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

Sir George Cave and the Mastership of the Rolls.

WE CALLED attention recently (*ante*, p. 301) to various considerations affecting the filling up of the impending vacancy in the Mastership of the Rolls, and we shewed quite clearly our appreciation of Sir GEORGE CAVE and his qualifications for the office; though we questioned whether, under all the circumstances, that was a proper appointment to make, and we deprecated the idea that there is any rule entitling a law officer, past or present, to judicial office. If there has been such a rule, it has lost most of any justification it had since law officers gave up private practice, and became exclusively official counsel. It is now stated that Sir GEORGE CAVE has decided to remain in the House of Commons and at the Home Office, so that the considerations which we mentioned have ceased to be of immediate importance. It is, no doubt, a sense of public duty which has dictated this decision, and we congratulate Sir GEORGE upon his political and administrative reputation, which has made him too valuable to be spared for judicial office; and the profession, while regretting—if this is to be regarded as final—Sir GEORGE'S withdrawal from its ranks, will appreciate the personal sacrifice which it involves.

The Birmingham Law Society.

WE PRINT elsewhere extracts from the report of the Committee of the Birmingham Law Society for the past year. We have also received "A Short History" of the Society, which commemorates the completion of its 100th year. It originated at a meeting of solicitors practising in Birmingham held on 3rd January, 1818, and nineteen gentlemen were enrolled as members in the first year. Under the rules the society was to consist of attorneys and solicitors resident in Birmingham and within ten miles thereof. Its progress in successive periods of ten years is shewn by the following figures:—19 (1st year), 40, 43, 51, 48, 86, 204 (1878), 257, 340 (1898), 366, and now, in 1918, 365. The minutes of the proceedings of the Society and its Committee have been kept throughout with great care. They are contained in nine volumes, and form, says the History, a record of the enormous amount of work achieved and attempted by the officers and committee; and, in particular, practically every Parliamentary Bill affecting the private rights

of the inhabitants of this country has been considered by the committee. Law societies have, of course, as one of their chief objects the safeguarding of professional interests; but the records of the Birmingham Law Society shew that their scope is not confined to this, and much the larger portion of its work has been concerned with the good of the community at large. The History, which is comprised in a pamphlet of twenty-eight pages, gives interesting information as to the development and work of the society—its library, its educational work, its introduction and frequent revision of Common Form Conditions of Sale, and so on—and it is noteworthy that, even before the formation of the society—in May, 1810—the solicitors of Birmingham passed a resolution against the insertion in conditions for sale of a condition that the purchaser's conveyance should be prepared by the vendor's attorney. The task of freeing conditions of sale from conditions unduly burdensome to the purchaser, begun thus early, has not yet been completed, and the question arose not long ago in regard to the expenses of concurring parties (see 60 SOLICITORS' JOURNAL, p. 382). The centenary of the Birmingham Law Society is an interesting event, and, under peace conditions, would, no doubt, have been fittingly commemorated. We are rather surprised that any law society has attained such an age. Perhaps some of our readers will tell us if any society is older.

Courts-Martial and Lawyers.

THE LETTER from "De Facto," which we print elsewhere, calls attention to the desirability in these times of constituting courts-martial out of lawyers who are on service. It will have been noticed that dissatisfaction with the procedure and decisions of courts-martial has frequently been expressed in the House of Commons, and in particular in connection with the death penalty. Whether the death penalty should be inflicted at all under the Army Act is a debatable question. Our own view is strongly opposed to it. With a voluntary army there may have been something to be said for it. At least a man knew into what he was enlisting. With a conscript army any justification disappears, for we are not disposed to accept the plea that State necessity is the ground for depriving any man of his life, and no military crime is of such enormity as to justify capital punishment, especially when capital punishment in any case is much questioned. But this is by the way. As to the procedure of courts-martial, Mr. MACPHERSON, the Under-Secretary for War, in the House of Commons on 20th February, referred to the matter, and the report of his speech (*Times*, 21st February) contains the following:—

> In view of the anxiety in the minds of the public as to the method of the trial of soldiers by court-martial, he had that morning obtained a written statement from an Assistant Provost Marshal who had been in France as to the practice followed in the command to which he was attached. That statement was to the effect that the accused man was always asked whether he wished any officer to act for him, and the services of that officer were always granted if they could be made available, or, if that were impossible, the accused man was invited to ask for someone else or the name of someone suitable was suggested to him. There were always in the camp plenty of officers of legal training who were willing to act as the friend of the accused soldier. It must be remembered that it was the duty in law of a court-martial officer to elicit every fact which was in favour of the accused person, and not to act as the prosecuting counsel in a criminal court. In order to reassure hon. members and the public on the subject, arrangements were being made to issue an Army Order reminding commanding officers and all concerned of the definite rules of procedure. Everything was done in accordance with British ideas of justice to see that fair play was accorded to a man in his hour of trial.

So far, so good; but the point is that the court should consist of men of legal training and habit of mind; not that the prisoner should have such to act as his friend.

Colourable Deportations.

IT IS idle to pretend that any lawyer who possesses a regard for the liberty of the subject can view without grave misgivings the decisions of the Court of Appeal in *Ex parte Duke of Chateau Thierry* (1917, 1 K. B. 922) and in *R.* v. *Chiswick Police Superintendent, Ex parte Léon Georges Sacksteder* (*Times*, 21st ult.), which upholds and extends the former case. Put quite briefly and frankly, these decisions say that the Home Secretary may use the discretion to infringe liberty conferred upon him by statutory power for one purpose, in order to infringe liberty in a totally different and much more serious way which goes beyond his express powers. In both cases French subjects resident in England were arrested here at the instance of the French Government, which wanted them for military service in France. They were in each case arrested under powers conferred by Article 12 of the Aliens Restriction (Consolidation) Order, 1916, which gives the Home Secretary—without recourse to a magistrate—discretionary power to make an order for the deportation of any undesirable alien. That Order, as PICKFORD, L.J., pointed out in delivering the judgment of the Court of Appeal, was aimed at the expulsion of really undesirable aliens; it never contemplated at all the deportation of allied friendly subjects under a Military Service Convention; and it gave the Home Secretary no power to fix any particular destination which the deported person must visit. Yet in each case the Home Secretary had arranged for the deportation of the alien by a particular ship which in fact would visit France, and which the exile could not physically leave until he reached France; it was not disputed, indeed, that the object of the order and detention of the alien was to secure his return to France and the seizure of his person by the French Government. Now, in the *Chateau Thierry case* the Divisional Court refused to regard as valid an order intended to effect indirectly a purpose which is clearly *ultra vires* of the Home Secretary's statutory powers, and which infringes the liberty of the subject. But the Court of Appeal overruled them, holding that in his discretion the Home Secretary could detain the deported person until a ship selected by the Home Secretary, not the alien, was ready to receive him. And in the present case, going one step further, the Court held that the Home Secretary can himself select the ship with the deliberate intention of forcing the alien to go to a particular destination against his will. The Court will not inquire into the legality of the purpose for which the Home Secretary exercises his statutory powers, provided on the face of it there is a *bonâ fide* exercise of his discretion for a public end (however *ultra vires*) and not for a private motive. It is difficult to imagine any circumstances which can justify such an arbitrary use of executive power.

Interference of Government Departments with Contracts.

THERE IS A very far-reaching clause contained in the Courts (Emergency Powers) Act, 1917, which is not so well known as it ought to be, and which has come up in an interesting recent case—*Glens S.S. Line* v. *Celtic Shipping Co.* (*Limited*) (*Times*, 22nd ult.). Section 3 of the Act provides—

> "Where, before or after the passing of this Act, the non-fulfilment of any contract (not being a contract of tenancy) was or is due to the compliance on the part of any person with any requirement, regulation, order, or restriction of any Government Department, or of a competent naval or military authority, made, issued, given, or imposed for purposes connected with the present war, or with any direction or advice issued or given by any Government Department, with the object of preventing transactions which, in the opinion of the Department, would or might be contrary to national interests in connection with the present war, proof of that fact shall be a good defence to any action or proceeding in respect of the non-fulfilment of the contract. A certificate by the appropriate Government Department shall be sufficient evidence that such direction or advice was issued or given, and with such object as aforesaid."

We may remark in passing that contracts of tenancy are excluded from this clause, not because they are deemed less deserving of protection, but because they are specially provided for by section 2 of the Act. Now, in the case of *Gans* v. *Celtic Shipping Co.* (*supra*), a steamship was chartered to make certain journeys between America and Europe; she in fact set sail for Rotterdam with a cargo of phosphates in pursuance of a contract. She was "advised" by the Admiralty to put into Falmouth, and had to abandon her voyage to Rotterdam because of that "advice." Sued for breach of their charter party, the owners pleaded (*inter alia*) section 3 of the statute and obtained an Admiralty certificate under that section.

This certificate the defendants treated as a document of their own, which they were entitled to keep dark as a winning card; at any rate, they did not feel compelled to disclose it to the other side. This the trial judge, Mr. Justice ATKIN, considered to be a mistaken act on their part; he took strongly the sensible view that certificates of a Government Department given under the section are not given to aid one litigant, but for the benefit of both in the interests of justice, and therefore should be at once disclosed to the other side. But the main question which arose was whether an Admiralty "advice," in order to justify non-fulfilment of a contract, must amount to a prohibition of the voyage, or must affect the war risks insurance; a narrow view of the section for which the charterers unsuccessfully contended.

The Meaning of "Issue" in a Will.

FEW RULES of construction are better established than the rule in *Sibley* v. *Perry* (7 Ves. 522) that, though the word "issue" extends to all descendants, yet, when it is used in a will with reference to "parent," it is confined to children. It is a question of using either "parent" or "children" in a non-natural sense, and it has been considered better to keep "parent" to its ordinary meaning of father or mother, and so restrict "issue" to children, than to give it the unusual meaning of ancestor and thus leave "issue" to extend to issue generally. But, like other particular rules of construction, it is subject to the general rule that the construction must be made on the entire document, and when in one part of the will the word "issue" is clearly used in its extended meaning, then this meaning applies throughout the will and overrides the indication of a narrower meaning arising from the use of the word "parent." Thus, if there is a gift over on failure of issue, this implies failure of issue generally, and the word "issue" in the original gift is taken to have the same meaning: *Ross* v. *Ross* (20 Beav. 645); *Ralph* v. *Carrick* (11 Ch. D., p. 883); and see *Re Timson* (1914, 2 Ch. 362), where the Court of Appeal, affirming YOUNGER, J. (1916, 1 Ch. 293), distinguished these last cases and applied the rule in *Sibley* v. *Perry*. But the exception has been applied by EVE, J., in the recent case of *Re Swain* (*ante*, p. 308), where there was a gift over on failure of issue, and since the word here had the meaning of issue generally, the same meaning was given to it in the original gift notwithstanding that the word "issue" as there used was used to denote issue of the "mother."

Qualified Covenants to Repair.

WHERE IN a lease the lessee's covenant to repair contains the qualification "the landlord allowing timber" or other materials, the question arises whether this is merely a qualification of the lessee's covenant, so as to make the allowance of timber by the landlord a condition precedent to the lessee's liability, or whether it implies an independent covenant by the landlord on which the lessee can sue. In *Thomas* v. *Cadwallader* (Willes, 496) the former view seems to have been taken, and it was held that the landlord, in suing on the lessee's covenant, must aver that he had been willing to allow timber so as to satisfy the condition precedent. On the other hand, in *Mucklestone* v. *Thomas* (Willes, p. 149) the Court intimated that the stipulation ought rather to be considered a covenant than a condition precedent, and where the lessee's covenant to repair had the provision, "the premises being previously put in repair by the landlord," it was held—though this was not the only indication of the intention—that there was a covenant on the part of the landlord. The question has come before the Court of Appeal in *Westacott* v. *Hahn* (reported elsewhere), where PICKFORD, L.J., pointed out that the effect of the words "being allowed all necessary materials," &c., depended entirely on how they were to be construed having regard to all the provisions of the lease. No technical words are necessary for the making of a covenant (*Lant* v. *Norris*, 1 Burr. 287, *per* Lord MANSFIELD, at p. 290; *Wolveridge* v. *Steward*, 1 Cr. & M., p. 657); and a covenant can be created by a participial phrase, such as the words "yielding and paying" rent in a lease, which make a covenant to pay the rent: *Hellier* v. *Caspard* (1 Sid. 266); *Vyvyan* v. *Arthur* (1 B. & C. 410). But having regard to the whole of the lease in the present case, the Court of Appeal held, affirming the judgment of the majority of the Divisional Court (61 SOLICITORS' JOURNAL, 253), that the words should be construed as a qualification only of the lessee's covenant, and not as a positive covenant by the lessor.

Autrefois Acquit.

SOME INTERESTING questions of criminal procedure arose before the Court of Criminal Appeal in what may well become the leading case of *Rex* v. *Charles Aughet* (*Times*, 27th ult.). The defendant, a Belgian officer, was charged with shooting at a Belgian private and wounding him in India House, Kingsway. Although the venue of the alleged offence is England, yet under a military convention between the British and Belgian Governments, subjects of each of these States, if under military law and accused of an offence against another person under military law, can be handed over and tried by a court-martial appointed by their own State. AUGHET was arrested in England at the instance of the private, but released on bail pending a trial at Calais by a Belgian court-martial; that court in fact acquitted him on the ground of "irresistible impulse," a defence permitted by Article 71 of the Belgian *Code Pénal*, but, of course, unknown to British law. He returned to England and was there indicted at the Central Criminal Court under section 20 of the Offences Against the Person Act, 1861. Four counts were framed against him, three alleging different alternative forms of "felonious" wounding, the fourth alleging the misdemeanour of "unlawful" wounding. As regards the first three, the trial judge directed a verdict of "Not guilty" on the plea of *autrefois acquit*, but allowed the fourth count to be tried on its merits, with the result that defendant was convicted. But on appeal the Court of Criminal Appeal has sustained the plea of *autrefois acquit* on the fourth count as well and has quashed the conviction. Really, three points arise. First, is the judgment of a foreign court sufficient to sustain a valid plea of *autrefois acquit* or *autrefois convict* when the accused is retried by an English court? The answer is yes (*R.* v. *Roche*, 1 Leach, 134), but the prisoner must produce a certificate of his acquittal under the public seal of the sovereign in whose courts he was tried. Secondly, has a Belgian court power to try abroad a prisoner accused of an offence in England? This is more difficult, but the answer would seem to be that a Belgian court-martial has by military law this jurisdiction where both prisoner and victim are jointly subject to its laws; so the question of jurisdiction is in favour of the accused. The third point is, whether the civil English offence of "unlawful wounding" is identical with the similar Belgian offence under Article 399 of the Belgian *Code Pénal* for which the prisoner had been tried abroad; unless the offences are in substance identical the plea is not good. This is really a question of foreign law and therefore of fact. The Court decided it in favour of the accused, and his plea of *autrefois acquit* was upheld.

Restriction by Bye-Law.

THE RESULT of *Canadian National Fire Insurance Co.* v. *Hutchings* (*Times*, 2nd ult.), a decision of a Judicial Committee consisting of Lord PARKER, Lord SUMNER, and Sir WALTER PHILLIMORE, is to draw a sharp distinction between the validity of directors' absolute veto on the registration of transfers when such veto is conferred by a clause in the constitution of the company, and when it is merely created by an otherwise valid bye-law. In the former case the veto is valid; in the latter case it is *ultra vires* and invalid. This is so even when the constitution of the company is contained in a special Act which expressly empowers directors to make bye-laws regulating the transfer of stock; so the Ontario Appeal Court decided in *Re Good* (23 Ontario L. R. 544), a decision approved by the Board as sound law. The reason is that the transferability of stock is one of its prime characteristics, and any interference therewith is *primâ facie* opposed to its character of personal property; so that only express enactment by the Legislature can justify such interference.

The Value of a Surname in Trade.

WHAT'S in a name? is a question said to have been propounded by Juliet to Romeo, to which, according to SHAKESPEARE, Romeo made no reply. Had Romeo been a commercial man, he might have answered—a great deal, if the name happens to be the same as that of a vendor of a popular article. An illustration of this is afforded by the recent case of *Goddard & Sons* v. *Hyam* (35 R. P. C. 20), before YOUNGER, J.

It appeared that JOSEPH GODDARD, of Leicester, began about 1870 to manufacture and sell an article called "Goddard's non-mercurial plate powder," or, more shortly, "Goddard's plate powder." It soon became popular, and had a large and increasing sale, and the term "Goddard's plate powder" became so well known in connection with the Leicester business that anyone using that term in the market intended, as found by YOUNGER, J., to refer to the plate powder of J. GODDARD & SON. The business is still and always has been carried on at the same premises. JOSEPH GODDARD died in 1877, and was succeeded by his son, J. W. GODDARD, who trades as J. GODDARD & SON. In 1856 G. E. GODDARD, a chemist in London, began to sell a preparation of his own, which he called "Goddard's non-mercurial plate powder." It was sold with a get-up quite different from that of the plate powder of GODDARD, of Leicester. His business in this plate powder was insignificant and trivial, and was carried on at Shirland Mews, Paddington, on premises which were described by the Judge at the trial as "of the most obscure and most exiguous description." He died in 1907, and was succeeded by his daughter, JANE GODDARD, who carried on the business as before until about 1909, when she became associated in the business with FLORIAN HYAM, who, according to the Judge at the trial, "saw the extreme value of this name as attached to this powder and its great possibilities"; so "changes were introduced to enable the business to be carried on in larger volume and on modern lines." The wrappers of the boxes were altered, and advertisements were issued. The business was stated to be carried on by *Goddard's London Plate Powder Co.*, at an address which was the address of HYAM, and this company (which was not a limited company) was described as "the inventors" of the preparation.

Under the new *régime* the trade increased very largely, and the powder was introduced into Australia, where it had not been sold before. It appeared that in 1892, and again later, GODDARD, of Leicester, had protested against the sale of the London plate powder, but did not follow up the protests with legal proceedings. In March, 1916, he, as he alleged, for the first time became aware of the sale of the plate powder by *Goddard's London Plate Powder Co.*, and in May of that year commenced an action for an injunction and other relief against HYAM and JANE GODDARD. On a motion being made, HYAM submitted to a judgment against him. Subsequently JANE GODDARD died. The action was continued against her legal personal representative, and came on for trial before YOUNGER, J., when it was arranged that as a sister of the late JANE GODDARD was proposing to carry on the business, which had been left to her by the will of JANE GODDARD, she should be added as a defendant to test her right to carry it on. YOUNGER, J., delivered an elaborate judgment, at the close of which he said that the added defendant only proposed to do what was done by her father in his lifetime and by her sister before she became associated with HYAM, and that "the long user has established that, notwithstanding the secondary meaning which is attachable to the plaintiff's preparation, the defendant's sale of her preparation in the old boxes and her use of her own surname in relation to the powder is honest and, being honest, and the means which have been adopted by her being sufficient to distinguish hers from the preparation of the plaintiff, she is entitled to go on." He accordingly dismissed the action with costs, but added, as to HYAM, that "his actual proceedings were not capable of justification."

What was the exact nature of the association of HYAM with JANE GODDARD did not transpire, but YOUNGER, J., spoke of him as being "left in practical control of this business," so that the business would appear to have been carried on for the joint benefit of HYAM and JANE GODDARD. This being so, it would seem that, had the action come on for trial while JANE GODDARD was still alive, a judgment would have been pronounced against her, giving the plaintiff, at all events, some relief, and he would not have been mulcted in the costs of the action. The added defendant is left at liberty to carry on the business in the London plate powder in the manner in which it was carried on before HYAM appeared on the scene, although it seems obvious that she must derive some benefit, direct or indirect, from the proceedings of HYAM, and from the effect of his recognizing the value of the name GODDARD in connection with plate powder.

The Effect of an Irish Bankruptcy.

BANKRUPTCY may be regarded by a jurist from three points of view. The first, and most fundamental, is that of status. The bankrupt is a citizen who is temporarily deprived of certain legal rights because of the misfortune or default which has rendered him incapable of discharging his obligations; he is a client whose *patronus* is the judge in bankruptcy, and he receives protection in exchange for the suffering of certain disabilities as regards property and contract. From the second point of view—the one which specially interests the conveyancer—bankruptcy is essentially one mode (among many others) of conveying property; it is a *cessio in jure* or universal succession to the whole of the bankrupt's property on the part of his creditors. Lastly, and here comes in the interest of the common law practitioner and the practical business man, it is also a form of legal execution; a convenient and drastic mode of forcing a debtor, whose property cannot easily be seized in execution, to make some effort towards discharging his obligations.

Now it is not unimportant, even in the actual decision of cases, which one of these points of view prevails for the moment in the judicial mind. For in doubtful cases the whole interpretation of provisions in the Bankruptcy Acts may depend on the attitude of the judicial mind towards the bankrupt. If the status aspect is uppermost in the mind of the court, there will be a tendency to regard bankruptcy as a universal relation carried about with him everywhere by the bankrupt, like his matrimonial or paternal relations, and affecting him in all domiciles alike with its disabilities and its protections. If the execution aspect, on the other hand, dominates the court, then just as certainly there will be a tendency to regard bankruptcy laws as simply local modes of recovering debts, and to refuse them operative effect in other domiciles. This latter point of view prevailed, we think, in *Re A Debtor, No. 333 of* 1917 (reported elsewhere), and induced the Court of Appeal to hold that an Irish debtor's discharge is not operative in England.

The facts of this case are simple enough. The debtor was sued in England and judgment entered against him, no appearance having been entered, on 18th June, 1917. A bankruptcy notice was served on 23rd June, a bankruptcy petition presented on 12th July, and the date of hearing fixed for 15th August, but adjourned to 22nd August. Meanwhile, other creditors of the debtor, who was at this time quartered in Ireland, had commenced proceedings against him there, and had obtained judgment on 16th July in the Irish King's Bench Division. On 17th August the debtor filed a petition for protection in the Bankruptcy Court of Ireland under the provisions of the Irish Bankruptcy Acts of 1857 and 1872. These Irish proceedings resulted in a composition; the debtor made a proposal, which was accepted by his creditors, and on 30th November, 1917, he received from the Court a certificate of protection under section 64 of the Act of 1872. On 6th

December, a week later, the English bankruptcy petition—which had been adjourned from time to time—came up again for hearing. The question was then raised whether or not the Irish protection certificate operated in England; but it was decided adversely to the claim of the debtor by the registrar, and on appeal by the Court of Appeal.

The reasons given by the Court for this important decision are interesting, if somewhat technical. They proceeded to construe the Irish Statutes to see whether or not they granted the debtor a complete discharge from all his debts everywhere. It was not disputed that, if they had, then, since the debtor was domiciled in Ireland, the jurisdiction of the Irish court would be recognized by the English court. But a narrow and somewhat technical construction of the Act led to the view that it did not intend to affect the remedies of creditors outside Ireland. In our opinion the Court took this view because it regarded bankruptcy essentially as a creditors' remedy, *i.e.*, took our third point of view, and not as a change in the debtor's status. But the actual line of reasoning is plausible, and, stated very shortly, was as follows:—

Section 410 of the Irish Act of 1857, which is to be read together with that of 1872, as provided by section 1 of the latter Act, says that it shall not extend to England or Scotland except where they are expressly mentioned. There is a similar provision in section 2 of the 1872 Act. Now the provisions as to the making of compositions with creditors, and issue of protection certificates, are contained in various sections of both Acts which make no reference to England or Scotland. Hence the Court inferred that they have no effect there. This seems to us a very curious way of interpreting an Act of the United Kingdom Parliament which relates to Ireland. Statutes of the British Parliament which deal purely with the local affairs of England or Scotland or Ireland always state that, in the absence of express mention, they do not extend to the other two countries. But this does not mean, surely, that legal judgments lawfully given under them in the country to which they relate are not binding elsewhere. It only means that the law as laid down in the statute is to be the local law of Ireland alone, for instance, and not of England and Scotland as well. Now the Court of Appeal here prayed in aid of its view the Privy Council decision of *New Zealand Loan and Mercantile Agency Co.* v. *Morrison* (1898, A. C. 349), to the effect that the provisions of the Joint Stock Companies Arrangement Act, 1870, only extend to creditors when their rights are in question in the courts of the United Kingdom; and not when their rights are in question in an English colony. But surely there is an obvious difference there. Parliament has powers to legislate for the whole Empire if it chooses, but usually it legislates only for the United Kingdom. The Colonies have been granted constitutions, and the Imperial Legislature, although it can override these, will not be held to do so casually in an ordinary Act of Parliament. It is for the Colonies to make their own bankruptcy laws; indeed, advocates of Imperial Federation have long claimed as one of its advantages the institution of universal bankruptcy laws. Some Acts, such as the Merchant Shipping Acts, are indeed already applied throughout the Empire; but this is expressly done by the Imperial Legislature with the acquiescence of the Dominions, because the high seas are not local or territorial in their character. There is, therefore, no real analogy between the principle that a British statute does not operate to affect the rights of creditors in Colonial courts, and the Court of Appeal's corollary that a British statute, having local reference to Ireland, does not operate to affect the rights of creditors in English or Scottish courts. But the point, as is evident from the fact that the Court of Appeal reserved its decision, is not an easy one.

In the House of Commons on 25th February, Mr. Clynes informed Mr. King and Mr. Lough that his attention had been called to the decision of the magistrate at Saffron Walden that tea is not a food, and he was aware that other magistrates had taken a contrary view. The question of an appeal was under consideration, and it might be desirable to amend the Food Hoarding Order so as to bring tea specifically within its provisions. In any case there was no intention of withdrawing the Government scheme for the control of tea.

The Brest-Litovsk Negotiations.

III.

We have stated the Russian proposals and the Central Powers' counter-proposals which were before the Committee on territorial questions on 14th January, and discussion then followed which further elucidated the position of each side. M. Trotsky combated the view which had been set forth by General Hoffmann (*ante*, pp. 326, 327), that the Russian Government in its own territories overbore the right of self-determination by violence, and pointed out that all Governments were based on power. "Throughout the whole of history no other kind of government had been known. So long as society consisted of contending classes, the power of Governments would be based upon strength, and these Governments would maintain their dominion by force." But this, he said, did not represent the Russian Government's policy on national questions, as was shewn by its allowing to the Ukrainian people the right of self-determination, and recognizing the independence of the Ukrainian Republic.

Von Kuhlmann then stated the distinction as he conceived it between the German and Russian views as to the exercise of the right of self-determination in the occupied territories. The Germans proposed to use for this purpose the existing assemblies; the Russians proposed to set these aside, thus leaving a vacuum, and afterwards to fill this with some new form of authority:—

> "The fundamental difference between our conceptions and that of the Russian delegation is that, contrary to it, we wish to see arise in those regions, without break or violent transition, an orderly State, and that we decline to adopt out of sheer altruism the theory of creating a vacuum and of allowing the establishment of a State within this vacuum, in no more clearly defined manner than has so far been demonstrated."

This view was opposed by M. Trotsky, who denied the "vacuum theory." "The inhabitants of Poland, Lithuania, and Courland would by no means find themselves in a difficult political situation if the army of occupation left them to their own devices. In so far as technical difficulties were concerned, such as not having their own railways, post, etc., an agreement on such questions could always be arrived at, even without the control of an army of occupation." This concluded the sitting on Monday, 14th January.

On Tuesday, 15th January, the discussion continued, the difference becoming more and more centred on the question of the withdrawal of the armies of occupation as a preliminary to the exercise of the right of self-determination. Von Kuhlmann insisted that the military securities stipulated in the German proposals—namely, that there should be no withdrawal of troops so long as the general war lasted—could not be waived, but he declared that the Central Powers would pledge themselves not to allow their occupying forces to indulge in political pressure. The discussion was then adjourned owing to Count Czernin's indisposition.

Upon its resumption on Friday, 18th January, the chief matter of debate was the determination of conditions for the exercise of the right of self-determination by the peoples of Poland, Lithuania and Courland. Von Kuhlmann expressed himself in the sense that the German Government was ready to take upon itself the obligation to organize upon an extensive scale a consultation of the people not later than a year after the conclusion of a general peace. But when M. Trotsky endeavoured to elicit a clear statement as to whether the consultation, even a year after the conclusion of a general peace, would be preceded by the evacuation of the army in occupation, von Kuhlmann, after several attempts to evade a direct answer, was forced to declare openly that the German Government could not undertake any obligation with regard to the recalling of the army in occupation. And on the question of the mode of exercising self-determination, the German delegation held that a referendum would not correspond to the state of development of the population of these territories, and that it would be more suitable to supplement the representative bodies of these territories by elections on broad lines, and to extend them in such a manner that they could really be regarded as representing the entire population. The Russian delegation adhered to its proposal that only a referendum should decide the future State form of these countries. Herr von Kuhlmann again pointed to the endeavour of the Central Empires to grant broad classes of the population in these regions an ever-increasing influence in political affairs. What must unconditionally be secured, he said, was the maintenance of order during the transitional period. What must be prevented was extension of the Revolution to these regions which had already sufficiently been afflicted by the war.

Discussion followed as to the extent of the territories involved

in this question, and General HOFFMANN produced a map of the territory between the Baltic and Brest-Litovsk, and declined to allow discussion as to territories to the south of Brest-Litovsk, saying that these were covered by the pending negotiations with the Ukraine. But M. TROTSKY rejoined:—

> "As I have already twice remarked, namely, on the occasion of the recognition of the Ukrainian delegation, the exercise of the right of self-determination by the Ukrainian people has not yet advanced so far that the question of the delimitation of the frontier between us and the new Republic could already be regarded as settled. I remarked on that occasion that this will produce no difficulties in the negotiations, as, according to our principles, the frontiers are defined by the will of the broad masses of the populations interested. It would require an agreement between us and the Ukrainian delegation in each separate case, and this naturally refers also in the fullest sense to the regions south of Brest-Litovsk."

The discussion then turned to the position of the Aaland Islands, and was adjourned to 29th January.

Meanwhile the Central Powers had been carrying on separate negotiations with the Ukraine delegation, and on 16th January a settlement was arrived at in principle as to the future political relations of the Central Powers and the Ukraine. These separate negotiations were strongly opposed by the Russians, and on the same day (16th January) a declaration against them was issued at Brest-Litovsk. "Being of opinion," it said, "that the vital interests of the mass of Russian workmen and peasants and those of the Ukraine are at stake, we have decided to repudiate publicly all responsibility for these *pourparlers*." But the protest had no effect; the question was really as to which party in the Ukraine—that of the Rada or that of the Central Executive Committee in sympathy with the Bolshevists—was to prevail, and on 21st January it was announced in a German telegram from Brest-Litovsk that the principles of a treaty for peace between the Central Powers and the Ukraine had been settled as follows:—

> The state of war is to be declared at an end. The resolution of both parties to live henceforth in peace is to be ratified.
>
> The troops of both parties are to be withdrawn at the conclusion of peace.
>
> Both parties agree that arrangements shall be made in the treaty of peace for the immediate resumption of lawful economic intercourse.
>
> Diplomatic and consular relations are to be resumed as speedily as possible.

About the same time—on 22nd January—a statement as to the results of the Brest-Litovsk negotiations was issued at Petrograd, in which it was said:—

> "Public opinion in Revolutionary Russia has a clear idea of the nature and spirit of the *pourparlers* at Brest-Litovsk. The aims of German Imperialism appeared with positive clearness. They involve the occupation of almost all the territories at present occupied by the Austrian and German troops. The Germans refuse to give any sort of guarantee concerning the withdrawal of their troops from Poland, Lithuania, Riga, and the Islands in the Gulf. In such circumstances, the term 'self-determination' sounds like a mockery of the principles and of the peoples concerned. . . .
>
> "What, then, did KUHLMANN hope for? Clearly, he reckoned that the Russian delegation would help him to conceal from the peoples interested the true meaning of the German peace programme.
>
> "The Revolution cannot live in an atmosphere of deceit and falsehood. At a given moment the Revolution may not be in a position to repudiate the annexationists, but it will never humiliate itself by calling black white, and will not cover up brutal annexationist pretensions with the fig-leaf of democracy. The significance of the Brest-Litovsk *pourparlers* is that they have stripped from German imperialism the false coats temporarily borrowed from the democratic wardrobe, and have exposed the cruel reality of the annexationism of owners and capitalists.
>
> "The Brest-Litovsk *pourparlers* are clear. There is nothing more to be demanded from the *pourparlers*."

And a general message was also issued, stating that the object of the Austro-German Delegation was "a monstrous annexation."

VON KUHLMANN, on 25th January, justified the German attitude at a meeting of the Main Committee of the Reichstag (*Times*, 28th January), and returned to the question of the "vacuum":—

> "The carrying out of the principle of the right of self-determination must, according to our standpoint, be logically completed by the further development of what already exists. Now in these hard war times we hold it to be doubly foolish first to sweep away everything existing and then to build something into a vacuum. It will be the policy of the Government, *optima fide*, to extend what is already there, in order by the slow growth of historical progress to arrive at a point where one can say with a clear conscience—that is now really the expression of the overwhelming majority of the people concerned.
>
> "It directly follows that we can demand at least presumptive validity for the existing votes and expressions of opinion of the national will, especially in the beginning, when national development is formed and expressed by a small number of patriotic and spirited leaders of high intellectual standing. The great mass of people then follows slowly. . . . I hold that a duly authorized Assembly, on a broad basis, answers the purpose much better than a referendum, but I believe the negotiations will not be wrecked on that point either."

The Brest Conference was reopened on 30th January, and the Russian protest against the separate Ukraine negotiations was again made, but ineffectively, and peace was signed between the Central Powers and the Ukraine on 9th February. We do not find that the discussion of the other matters outstanding between Russia and the Central Powers was advanced. Probably this was impracticable having regard to the declarations made by Russia as to the real designs of the Central Powers. And on 10th February the Russian Delegation broke off the negotiations, saying that no formal peace treaty would be signed, but declaring as ended the state of war with Germany, Austra-Hungary, Turkey, and Bulgaria, and simultaneously giving orders for the complete demobilization of the Russian forces on all fronts. But while the negotiations had thus proved abortive, they remain as an important record of the objects proposed by each side.

Correspondence.

Legacies to Solicitor-Executor.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Replying to your correspondent "Dubitante" in his letter in your journal of the 16th instant:

1. The legacy should be treated as a personal gift, and as capital whatever the amount.

2. The professional charges should be included in the office receipts, whether the solicitor carries on his business alone or in partnership, and would be chargeable for income tax under Schedule D.

R. N. R.

February 26.

The Woman Voter.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Section 4, sub-section (3),* of the Representation of People Act, 1918, appears to give an unmarried woman the Local Government vote at the age of twenty-one, and then, if she marries, either to take the vote away until she is thirty, or to give her a substituted, or cumulative, or alternative right to go on the register as a wife when she is thirty. Further, if she has attained the age of thirty when she marries and she commences to reside with her husband, his previous six months' residence will be sufficient to qualify the two—that is to say, the woman, in such a case, need not qualify under section 6.

G. SAUNDERS-JACOBS.

195, Romford-road, Forest Gate, E. 7., February 23.

* Section 4 (3) is as follows:—

"A woman shall be entitled to be registered as a local government elector for any local government electoral area:—

(a) Where she would be entitled to be so registered if she were a man; and

(b) Where she is the wife of a man who is entitled to be so registered in respect of premises in which they both reside, and she has attained the age of thirty years and is not subject to any legal incapacity."

The Civilian Soldier and Military Courts.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Some concern prevails with regard to the conduct of the court-martial. With so many lawyers in the ranks, why are not legal matters left to them, as medical matters are left to the Army's medical men and spiritual matters to the Army's priests? To those who have studied the law and practised in it, who have a close acquaintance with the tremendous qualifications required in men who occupy the civil Bench, and who know by experience how difficult it is even for such men to prevent miscarriage of justice, it is remarkable how it could ever have been thought that

anyone is fit to take his place on the military Bench merely on the ground of his success in the profession of arms.

While the Army remained a small professional body it was competent to them to exercise their own judicial functions. But now that the mass of the Army is civilian, new considerations arise, and, in the matter of life and death, a nearer approximation to civilian safeguards is called for. These could be afforded by the lawyers in the field, for, as the result of their military service, they would have learnt to combine expedition of procedure with precision of investigation and so the needs of their environment would be satisfied.

DE FACTO.

February 28.

[See observations under "Current Topics."—ED. *S.J.*]

(1918) 62 Sol Jo 347, HL. (122)

CASES OF THE WEEK.

House of Lords

CHARLES R. DAVIDSON & CO. v. M'ROBB or OFFICER.

15th, 19th, 20th November, 1917; 28th January, 1918.

WORKMEN'S COMPENSATION—ACCIDENT—"ARISING OUT OF . . . THE EMPLOYMENT"—SHIP'S ENGINEER ON LEAVE ASHORE—RETURNING AT NIGHT FALLS INTO DOCK WHERE HIS SHIP WAS AND IS FOUND DROWNED—DOCK UNDER CONTROL OF NAVAL AND MILITARY AUTHORITIES—DECEASED MAN GIVEN PASS ENTITLING HIM TO ENTER DOCK PREMISES—WORKMEN'S COMPENSATION ACT, 1906 (6 ED. 7, C. 58), S. 1.

A ship requisitioned by the Admiralty was lying beside a quay in docks at Ramsgate, which, since the war, were under the control of the naval and military authorities. The chief engineer went ashore on leave for his own purposes. He was given a pass, and on his return about 10.30 p.m. on a dark night in February he passed the guard and went towards where the ship was moored. He did not get to the ship, and his body was subsequently found in the dock about seventy yards from the place of access to the ship from the quay. There was no evidence at all as to how he came to fall into the water.

Held (Lord Finlay, C., *dissenting*), *that the employers were not liable, as the applicant had failed to shew that the accident arose out of and in the course of the deceased man's employment.*

Longhurst v. John Stewart & Sons (Limited) (61 SOLICITORS' JOURNAL, 1; 1916, 2 *K. B.* 303, *affirmed in House of Lords;* 61 SOLICITORS' JOURNAL, 414; 1917, *A. C.* 249) *distinguished.*

Per Lord Finlay, C., Lords Dunedin and Atkinson: "*In course of the employment*" *does not mean during the currency of the time of the engagement, but includes the actual time that the workman is engaged at his work, and the time he is doing that which is incident to it.*

Dicta *of* Earl Loreburn *in* Moore *v.* Manchester Liners (54 SOLICITORS' JOURNAL, 703; 1910, *A. C.* 498), *and* Fletcher Moulton, L.J., *in* Kitchenham *v.* s.s. Johannesburg (Owners of) (55 SOLICITORS' JOURNAL, 124; 1911, 1 *K. B.* 523), *upon the meaning of* "*course of the employment*" *dissented from by* Lord Dunedin *and* Lord Atkinson.

Appeal by the employers from an interlocutor of the First Division of the Court of Session (the Lord President, Lords Mackenzie and Skerrington) (reported 54 Sc. L. R. 362, 10 B. W. C. C. 480), which reversed an award of Sheriff-Substitute Young at the Sheriff Court, Aberdeen, in proceedings by the widow of a seaman named Charles Officer to recover compensation in respect of his death. The Sheriff-Substitute found the facts as outlined in the headnote, and held that the accident to the deceased man arose in the course of his employment, but that it had not been shewn that it arose out of his employment, and he therefore found that the employers were not liable in compensation. That decision was reversed by the Judges of the First Division, who were of opinion that the case was covered by the decision of the Court of Appeal in *Longhurst* v. *John Stewart & Sons (Limited)* (*supra*), and that the proper influence from the facts was that Officer met with his death by accident arising out of and in the course of his employment. The employers appealed.

After consideration, the HOUSE, by a majority, allowed the appeal.

Lord FINLAY, C., said there was no dispute as to the facts, the only question was whether in point of law on those facts the arbitrator was correct in holding that the accident did not arise out of the employment. The question had often arisen with regard to sailors leaving and returning to their ships when they had been permitted to be absent on leave. It would seem from the cases cited that, if the ship was connected to the public quay by a gangway, then, when on his return the sailor reached the shore end of the gangway, his employer would be liable. On the other hand, if the ship was lying in a dock to which the public had not access as of right, and to which only persons coming on business were admitted, the liability of the employer began when the sailor entered the dock. The same principle was applied as to cesser of liability, and it was so decided in *John Stewart & Sons (Limited)* v. *Longhurst* by this House. The appellants sought to distinguish *Longhurst's case* on two grounds: First, that in *Longhurst's case* the dock was private property, whereas here the control of the harbour was exercised by the naval and military authority. In his opinion the result was the same. In each case the servant had to go to a place which had special dangers, and got access to this place solely by reason of his employment. The second ground of alleged distinction was that the seaman was leaving, whereas here he was returning to his employment. He could not regard that as making for this purpose any real difference. He returned to his employment in either case at the same point at which he would have left it if he had been going away from the ship. Whether the man was on his own business or his master's would be very material for determining whether an accident on the public streets arose out of the employment, but it had no bearing on the question at what point the service was in contemplation of law resumed. On such authorities as *Moore* v. *Manchester Liners (Limited)* (*supra*), *Kitchenham* v. *s.s. Johannesburg (Owners of)*, *Webber* v. *Wansbrough Paper Co.* (58 SOLICITORS' JOURNAL, 685; 1915, A. C. 51), and *Parker* v. *s.s. Black Rock (Owners of)* (1915, A. C. 725, 8 B. W. C. C. 327), he thought that the accident "arose out of the employment." For substantially the same reasons he thought it also happened "in the course of the employment." Those last words did not mean in the currency of the time of the engagement. If they meant that, they would add nothing to the preceding words "arising out of the employment," and would let in the possibility of a number of claims which the words "in the course of the employment" rightly read as meaning "in the course of the work or service" would exclude. If "in the course of the employment" meant during the currency of the engagement, a sailor engaged for a round voyage would be in the course of his employment while in a public-house in any port where he had leave to go ashore. "Course" was more applicable to work or service than to the currency of the engagement. Leave on shore on the sailor's own business or pleasure was an interruption of his employment, not in the course of it. This view of the meaning of the words in the course of the employment might not be in agreement with some of the expressions in some judgments, but were not, in his lordship's opinion, in conflict with any decision of that House. The appeal, in his opinion, failed.

Lord HALDANE read a judgment in favour of allowing the appeal.

Lord DUNEDIN agreed with Lord Haldane. The First Division said they followed the decision of the Court of Appeal in *Longhurst's case*. Since then this House had affirmed the view of the Court below in that case. The first matter to be decided was what did that case decide? Now, an accident to arise out of the employment must be attributable to a risk incidental to the employment. In *Longhurst's case*, the place to which the workman was sent was necessarily the dock, because he had to traverse the dock to get to the barge. And the dock was a dangerous place, so that the danger which brought about the accident was a danger to which his employment on the occasion subjected him. The accident therefore arose out of the employment. Here the man was not sent to the place where he met with his death on his employer's orders. That fact alone completely distinguishes the case from *Longhurst's case*, but it does not conclude the question in favour of the employers. Lord Skerrington said "the employment was continuous in the capacity or ship's engineer, and the man having gone on shore on leave, he perished in the course of his employment." In expressing that view he had the authority of Fletcher Moulton, L.J., in *Kitchenham's case* (*supra*), and that of Earl Loreburn in *Moore's case* (*supra*). He did not agree with those opinions, and he thought their soundness was not involved in any judgment of this House. Now it was clear that the addition of the words "and in the course of" were meant in some way either to qualify or explain further the words "out of." He thought they explained them. It was in one sense difficult to imagine that there could be any injury held as arising out of the employment which would not also be in the course of the employment, and it might be that the determination of the question whether at the moment of the injury the workman was in the course of the employment might go to solve the question whether the injury arose out of the employment. The words in the course of the employment connoted a different thing from "during the period of employment." They connoted the idea that the workman was doing something which was part of his service to his employer. That need not be actual work, but it must be work, or the natural incidents connected with the class of work—*e.g.*, in the workman's case the taking of meals during the hours of labour; in the servant's case, not only the taking of meals, but also resting and sleeping, which follow from the fact that domestic servants generally live and sleep under the master's roof. The noble lord then referred to the *dicta* by Fletcher Moulton, L.J., in *Kitchenham's case* (*supra*), and to that by Earl Loreburn in *Moore's case* (*supra*), and said he did not agree with them in thinking that, in the case of a continuous engagement, a man was in the course of his employment if the accident happened at any place where he might reasonably be at that time. The *dicta* were not agreed to by Lords Macnaghten or Mersey. They were pronounced in cases in which the sailor met with the accident in the course of his return to the ship. He had had the advantage of reading the opinion about to be delivered by Lord Atkinson, who examined this point minutely in all the cases decided as to sailors going from or returning to their ship, and his decision on the result he arrived at was in accordance to the view he himself had formed. In conclusion, he must hold that the result at which the arbitrator arrived was the right result. His award must be restored.

Lord ATKINSON and Lord PARMOOR then read judgments allowing the appeal.—COUNSEL, for the appellants, *Condie Sandeman*, K.C., and *Macmillan*, K.C.; for the respondent, *Roberton Christie*, K.C., and *A. Morrice Mackay* (all of the Scottish Bar). AGENTS, *Batterell & Roche*, for *L. Mackinnon & Sons*, Advocates, Aberdeen, and *Jameson & Sons*, W.S., Edinburgh; *J. Nabarro*, for *H. J. Gray*, Advocate, Aberdeen, and *Murray & Brydon*, S.S.C., Edinburgh.

[Reported by ERSKINE REID, Barrister-at-Law.]

Court of Appeal.

Re A DEBTOR No. 333 of 1917. THE DEBTOR v. PETITIONING CREDITOR AND OFFICIAL RECEIVER.

No 1. 5th and 20th February.

BANKRUPTCY—RECEIVING ORDER—DEBTOR RESIDENT IN IRELAND—PROCEEDINGS IN IRISH BANKRUPTCY COURT BY OTHER CREDITORS—COMPOSITION—CERTIFICATE OF CONFORMITY—EFFECT ON ENGLISH BANKRUPTCY PROCEEDINGS—BANKRUPT AND INSOLVENT (IRELAND) ACT, 1857 (20 & 21 VICT. c. 60)—BANKRUPTCY (IRELAND) AMENDMENT ACT, 1872 (35 & 36 VICT. c. 58).

The certificate issued by the Bankruptcy Court in Ireland certifying a private composition made between a debtor and creditors in Ireland in the form of Schedule C to the Bankruptcy (Ireland) Amendment Act, 1872, while operating, in pursuance of section 64 thereof, to all intents and purposes as a certificate of discharge from all bankruptcy proceedings in Ireland, does not extend to operate as a discharge in the English Courts, so as to bar the claim of an English creditor in respect of a debt incurred and payable in England, where he has not assented to the composition.

Appeal from a receiving order made by Mr. Registrar Francke, raising a very important question of bankruptcy law, on the effect of a certificate of discharge granted by the Bankruptcy Court in Ireland. The petitioning creditors, Messrs. Dare & Dolphin, of Piccadilly, sued the debtor, Captain James Hope Nelson, in the King's Bench Division in England, claiming £162 9s. for goods sold and delivered. No appearance was entered, and judgment was signed on 18th June, 1917. A bankruptcy notice was served on the debtor on 23rd June, and a petition was presented on 12th July. The date fixed for hearing the petition was 15th August, but as the debtor did not attend it was adjourned to 22nd August. Meanwhile other creditors of the debtor, who was an officer quartered in Ireland, commenced proceedings against him there, and on 16th July judgment was obtained against him in the Irish King's Bench Division for £372. On 17th August the debtor filed a petition for protection in the Bankruptcy Court of Ireland under the Bankruptcy (Ireland) Acts, 1857 and 1872, and, as a result of these proceedings, the debtor made a proposal for a composition which was accepted by the creditors, and on 30th November a certificate under section 64 of the Act of 1872 was issued by the Court. The English creditor had notice of the Irish proceedings, but did not attend them, and did not assent to the composition. Pending these proceedings the hearing of the bankruptcy petition in England had been adjourned from time to time, and it came on for hearing on 6th December, 1917. It was then contended on behalf of the debtor that he had been released from the debt by the certificate issued in Ireland, but Mr. Registrar Francke dismissed this contention and made a receiving order against the debtor. The debtor appealed. *Cur. adv. vult.*

THE COURT dismissed the appeal.

SWINFEN EADY, L.J., after stating the facts and dismissing the appellant's contention that substituted service of the petition upon him was invalid, proceeded: The appeal raised an important question, which depended on the true construction and effect of two Irish statutes, the Irish Bankrupt and Insolvent Act, 1857 (20 & 21 Vict. c. 60) and the Bankruptcy (Ireland) Amendment Act, 1872 (35 & 36 Vict. c. 58). The two Acts were to be construed together as one Act (Act of 1872, s. 1). The respondents contended that the certificate given to an arranging debtor in Ireland did not bar an English debt sued for by an English creditor in an English court. It was provided by section 410 of the 1857 Act that it should not extend to either England or Scotland, except where the same were expressly mentioned, and by section 2 of the Act of 1872 that it should not, except where expressly provided, apply to England or Scotland. The Act of 1857 applied only to traders, but the Act of 1872 extended to all debtors. The Acts enabled an insolvent debtor to effect an arrangement with his creditors without publicity. By section 343 of the Act of 1857, as amended, a debtor unable to meet his engagements with his creditors, might present a petition to the Court, and thereupon the Court had power to grant protection to his person and property and to renew it from time to time. By section 344 the Court was then to appoint a private sitting, notice of which was to be given to the creditors. By section 346 the debtor was to attend the private sitting, creditors were to prove their debts as in bankruptcy, and if a majority of three-fifths in number and value of the creditors proving, whose debts amounted to £10, should approve of the debtor's proposal, the Court was to appoint another private sitting. If the proposal was confirmed at the second meeting, it was to be put in writing and signed by the creditors and, subject to confirmation by the Court, to be binding against all persons who were creditors at the date of the petition and had notice of the sittings. The Court might confirm it, cause it to be filed and entered for record, and grant the petitioner a certificate. By section 64 of the Act of 1872, when the arrangement had been carried into effect and the creditors of the arranging debtor satisfied, the Court was to give him a certificate under the seal of the Court in the form in Schedule C, which was to operate to all intents and purposes as if it were a certificate of conformity under the Bankruptcy Acts. The effect of a certificate of conformity was to release the bankrupt from all debts provable in bankruptcy, with some exceptions. The appellant's proceedings in Ireland were regularly taken, he offered a composition of 10s. in the pound, the creditors accepted it, and on 30th November, 1917, obtained a certificate in the form in Schedule C. The respondents did not prove in the arrangement, and did not accept the composition. The question was whether the English judgment debt must be regarded as released and discharged by the Irish proceedings when it was sought to enforce it by proceedings in England. The statutes in question were Acts of Parliament of the United Kingdom, but whether they bound English creditors in proceedings in English courts depended on their construction. Such creditors might be bound by Irish bankruptcy proceedings, but it by no means followed they would be bound by a composition arrangement. In *Armani* v. *Castrique* (13 M. & W. 443), Pollock, C.B., said (at p. 444) that an English certificate was a discharge as against all the world in the English courts, and that it would be an injustice to take the property of a bankrupt in a foreign country, and then to allow a foreign creditor to come and sue him here. But here there was no diverting of any property of the debtor, nor was his title to any law or goods affected. Indeed, there was a greater difference between bankruptcy and a composition arrangement under the Irish Acts than between the bankruptcy of an individual and the winding-up of a company: *New Zealand Loan and Mercantile Agency Co.* v. *Morrison* (1898, A. C. 349; *per* Lord Davey, at p. 358). In the former case, the whole property of the bankrupt was taken away from him, while in the latter the property remained vested in title and in fact in the company, subject only to its being administered for the purposes of the winding-up under the direction of the English courts. Again, when the Irish Acts were considered, it would be noticed that as much care was taken to ensure publicity in bankruptcy proceedings as to ensure privacy in a composition arrangement. There were no advertisements of any kind in the latter proceedings, and they were expressly referred to as "private sittings." Although a certificate in the form in Schedule C was to operate to all intents and purposes as a certificate of conformity under a bankruptcy, it was not, unlike the latter, directed to be advertised. The effect of the certificate of conformity was to discharge the bankrupt from all debts provable in bankruptcy, with some specified exceptions, even though the name of the creditor may have been omitted from the list, and he might therefore have no actual notice of the proceedings: *Edwards* v. *Ronald* (1 Knapp's Rep. (P. C.) 259), and *Elmslie* v. *Corrie* (4 Q. B. D. 295). But having regard to the provisions of section 347, limiting the effect of an arrangement to the creditors who had received notice of the several private sittings, it could not have been intended, notwithstanding the wide language used, that a certificate in the form of Schedule C was to operate in England so as to bar an English creditor who had no knowledge or means of knowledge of the proceedings. Therefore some limit must be placed on the meaning of section 64 of the Act of 1872. There was no express provision that a certificate in the form of Schedule C, which was not a certificate of conformity, was to have the effect of such a certificate in England. The language of the statute was satisfied, if it had that effect in Ireland. [His lordship having referred to *Sidaway* v. *Hay* (3 B. & C. 12) and *Ellis* v. *McHenry* (L. R. 6 C. P. 228), proceeded:] In the latter case the essential difference between a bankruptcy and a composition was not relied on, nor was the point argued. The conclusion to which his lordship had arrived was that, according to the true construction of the Irish Acts, the provision that the certificate in the form of Schedule C was to have the effect of a certificate of conformity was applicable to Ireland, but did not extend to England, and such a certificate afforded no defence to proceedings brought in England by an English creditor for a debt incurred and payable there. The appeal from the receiving order would therefore be dismissed.

BANKES, L.J., and EVE, J., delivered judgment to the same effect.—COUNSEL, *Clayton*, K.C., and *Acton Pile*; *Douglas Hogg*, K.C., and *G. P. Kingham*. SOLICITORS, *Witham, Roskell, Munster & Weld*; *W. Wallace Harden*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

WESTACOTT v. HAHN. 25th, 28th and 29th January; 9th February.

LEASE—COVENANTS—LESSEE'S COVENANT TO REPAIR—LANDLORD SUPPLYING "ALL NECESSARY MATERIALS"—REFUSAL OF LANDLORD TO SUPPLY MATERIALS—CONSTRUCTION—QUALIFICATION OF LESSEE'S COVENANT.

A lease contained a covenant by the lessee to repair the demised premises "at his own cost, being allowed all necessary materials for this purpose (when previously approved in writing by the lessor) and carting such materials free of costs . . ." The lessor did not call upon the lessee to repair, but the lessee having applied to the lessor to supply such materials, the lessor refused to supply them. In arbitration proceedings the lessee claimed damages for failure to supply materials, and alternatively said that the lessor was by custom of the country bound to allow a tenant to have the necessary materials for the execution of reasonably needed repairs.

Held, that on the wording of the covenant there was no obligation imposed on the lessor to supply materials to the lessee, but the performance of a condition was imposed on the lessor with respect to the covenant by the lessee to repair. Read in conjunction with the rest of the instrument, the clause must be construed as a qualification of the lessee's covenants, and not as a positive covenant by the lessor.

Held, further, that the lessee was not entitled to give evidence as to the custom he alleged existed, as that would be inconsistent with the express words of the lease.

Decision of the Divisional Court (Coleridge, J., *dissenting on the first point*) (*reported* 61 SOLICITORS' JOURNAL, 253; 1917, 1 *K. B.* 605) *affirmed.*

Appeal by the lessee from an order of the majority of a Divisional Court (Lord Reading, C.J., and Ridley, J.—Coleridge, J., dissenting

on the first point only), whereby it was held, upon a special case stated by an arbitrator, first, that having regard to the terms of the lease under which the plaintiff became tenant of a farm belonging to the defendant there was no covenant by the latter to supply materials for repairs, but the performance of a condition was imposed on the lessor with respect to the covenant by the lessee to repair: and, secondly, that the lessee was not entitled to set up an alleged local custom as to a lessor's liability to supply materials for repairs, as it was inconsistent with the express words of the lease. At the close of the arguments judgment was reserved.

PICKFORD, L.J., said that by an indenture of lease made on the 23rd October, 1905, the predecessors in title of the present respondent demised to the appellant, Westacott, a farm and premises for twenty-one years from 29th September, 1905. The lease contained a covenant by the tenant to do repairs. It provided that the lessee—"Will from time to time during the said term at his own cost (being allowed all necessary materials for this purpose (to be previously approved in writing by the lessor) and carting such materials free of cost a distance not exceeding five miles from the farm) when and so often as need shall require well and substantially repair . . ." The lessor had not called upon the tenant to execute any repairs in accordance with the terms of the covenant, but the premises were out of repair, and the lessee had applied to the present lessor for the materials necessary to put the premises in proper repair in accordance with the terms of the covenant. As the lessor had failed to comply with that request, the lessee brought an action against him in which he claimed damages for his failure to supply the materials. The matter went to arbitration, and the arbitrator stated a case under section 19 of the Arbitration Act, 1889 (52 & 53 Vict. c. 49). He made his award in favour of the landlord. The tenant appealed to the Divisional Court, who (Coleridge, J., dissenting upon the construction of the lease only) held that the words "being allowed all necessary materials" did not constitute a covenant by the lessor to supply the materials, but were merely a qualification of the covenant to repair. There was a further question whether evidence of a custom that the landlord should provide the tenant with materials necessary for the proper repair of the demised premises was admissible in evidence. The Divisional Court were unanimous that evidence of such a custom was inadmissible. Now the real controversy was as to the meaning of the words "being allowed all necessary materials." Did they constitute a covenant by the landlord to provide the materials, or were they merely a qualification of the tenant's covenant to repair and leave in good repair the demised premises? He thought the authorities cited only showed that any words would make a covenant, whether participial or not, if it could be clearly seen that such was the intention of the parties. The clause was rather clumsily drafted. It was introduced by a double parenthesis into a well-known form of tenant's repairing covenant, apparently without much consideration of its effect upon the other repairing covenants which followed. In the sub-parenthesis it contained these words "(to be previously approved in writing by the lessor)" which seemed to have been considered of importance by the Divisional Court. They were important as giving to the lessor a power of approval or disapproval, and pointed rather against than towards an absolute obligation. The approval might refer to purpose or materials. If to the former, it seemed inconsistent with an absolute obligation to provide materials for necessary repairs whenever the tenant wished to do them. If to materials and not purpose, the argument was not so strong, but again the reservation to the lessor of such a power of approval or disapproval seemed to be rather contrary to the idea of an absolute obligation to provide materials. The conclusion he came to, taking the clause in conjunction with the rest of the instrument, was that it must be construed as a qualification only of the lessee's covenant, and not as a positive covenant by the lessor. On that view the appeal failed. He also agreed with the Divisional Court's decision on the other point raised.

BANKES and SCRUTTON, L.JJ., read judgments to the like effect.—Appeal dismissed.—COUNSEL, for the appellant, *Arthur Powell*, K.C., and *Stuart Bevan*; for the respondent, *J. B. Matthews*, K.C., and *W. E. Vernon*. SOLICITORS, *H. H. Wells & Son*; *Savery & Stevens*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

***Re* WOOD GREEN AND HORNSEY STEAM LAUNDRY (LIM.) TRENCHARD *v.* THE COMPANY.** Neville, J. 22nd Jan.

COMPANY—RECEIVER AND MANAGER IN DEBENTURE-HOLDERS' ACTION—ACTING AS MANAGER AFTER DATE LIMITED BY THE ORDER—ALLOWANCES—PRACTICE—SUMMONS TO VARY REGISTRAR'S CERTIFICATE—FILING OF FURTHER EVIDENCE THEREON.

All items of remuneration of a receiver as manager ought to be disallowed from his accounts by the registrar in winding-up when he acts as such after the termination of the period allowed by the order of the Court fixing the period of his powers of management.

On a summons to vary the registrar's certificate the only evidence admissible is that used before the registrar, and though the Court, under exceptional circumstances has power to admit further evidence, that power rests with the Court alone, and not with the registrar. Accordingly, where the registrar had under this misconception directed further evidence to be filed, the whole account was remitted to him for reconsideration on the fresh evidence.

This was a summons by the liquidator of the company, which was in course of compulsory winding-up: (1) That the certificate of the registrar might be varied in respect of the period after 1st September, 1916, by disallowing all items except such as would have been allowable if the receiver had been appointed and acted as receiver only, and in respect of the period prior to that date by various other reductions; and (2) that the company might have leave to adduce further evidence on the hearing of the application to the Court. Subsequently to the issue of this summons on 4th July, 1917, another summons was taken out before the registrar on 14th July, 1917, for directions as to the evidence to be filed on the hearing of the summons before the judge, and directions were given on that summons under which affidavits had been filed by both sides. The certificate of the registrar was a certificate of allowances on the passing of the accounts of the receiver and manager appointed in a debenture-holders' action. The receiver and manager was appointed on 1st March, 1916, with directions that he was not to act as manager after 11th May, 1916, which time was subsequently extended to 1st September, 1916. After that date the receiver, without obtaining any further extension of time, continued to carry on the business of the company, admittedly down to 7th October, 1916, with a view to selling the property and business as a going concern. The negotiations for that end fell through, and in November, 1916, the Court made a general order for sale of the property, and further ordered that the receiver should forthwith close down the laundry of the company. When the receiver lodged his account the registrar, by his certificate, stated that he had in his discretion allowed the items of payment in respect of management incurred since 1st September, 1916, and that he left the question of remuneration to be dealt with by the Court. Accordingly the two questions for the Court were, first, whether the items of expenditure and remuneration by way of management after 1st September, 1916, ought to be disallowed or not, and whether the further evidence was admissible or not.

NEVILLE, J., after stating the facts, said: As to the first point, it is of the utmost importance that the orders of the Court shall be strictly complied with in these matters, and that receivers and managers shall not act on their own responsibility and afterwards come to the Court to ratify what they have done. In the circumstances of the present case I shall disallow all items of expenditure (if any) by way of management incurred after 11th November, 1916, that is the Saturday following the date of the order of 7th November, 1916, and shall not allow any remuneration of the receiver as manager from 1st September, 1916. As to the second point, I feel no doubt as to the practice. On a summons to vary the registrar's certificate the only evidence admissible is that used before the registrar, and though the Court, under exceptional circumstances, has power to admit further evidence, that power rests with the Court alone and not with the registrar. It is a complete misconception for the registrar to give leave to file further evidence to be used before the Court on a summons to vary his certificate after making which he is *functus officio*. The fact that he has done so, however, puts the Court under considerable difficulty, as it amounts to a statement on the part of the registrar that the evidence before him was not sufficient, but that further evidence was necessary before the Court could properly consider the question. That being so, I think that the right order will be for the whole account to go back to the registrar to be reconsidered by him on the evidence which had been subsequently filed.—COUNSEL, *Jenkins*, K.C., and *P. F. S. Stokes*; *Micklem*, K.C., and *Warwick Draper*. SOLICITORS, *C. R. Woolley*; *Hutchison & Cuff*.

[Reported by L. M. MAY, Barrister-at-Law.]

***Re* CHANCE'S SETTLEMENT TRUSTS. CHANCE *v.* BILLING.** Neville, J. 25th Jan.

SETTLEMENT—MERGER—PROTECTED LIFE ESTATE—INCOME—DISCRETIONARY TRUST—POWER TO APPOINT CORPUS—APPOINTMENT IN FAVOUR OF LIFE TENANT.

Where under a marriage settlement the trusts of the wife's property were for the wife for her life and after her death for the husband for

his life, with a common form protected life interest proviso in respect of the husband's interest, and the usual trusts for the issue of the marriage, with a gift over in default of issue (which event happened) as the wife should by deed or will appoint, with an ultimate trust for next of kin, and the wife died and her will operated as an exercise of the power of appointment in the husband's favour, on an application by the husband to have the trust funds transferred to him on the ground of merger of his interests,

Held, that there had been no merger of the husband's life estate in the reversion, because the two estates were not co-terminous, and an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.

This was a summons to determine whether there was a merger of an equitable life interest and an absolute reversion. The facts were as follows: By a settlement of 1890 the property of the wife was settled upon trusts to pay her the income thereof during her life, and after her death to pay the same to her husband for his life, with the proviso that, if he should assign or charge the income or any part thereof, or become bankrupt, or suffer any act or thing whereby the income if payable to him absolutely would become vested in or payable to any other person, then the trusts thereinbefore declared in his favour should cease and determine, and the trustees might at their discretion during the remainder of his life apply the income or any part thereof for his benefit or of his issue (if any) or any of them, in such manner as the trustees should think fit, and should pay and apply the surplus (if any) of the income, or the whole thereof if none should be applied in manner aforesaid, to the person or persons to whom the income would be payable or applicable under the settlement if he were dead. The usual trusts followed of capital and income after the decease of the husband and wife for the issue of the marriage, with a gift-over in default of issue (which happened) as the wife should by deed or will appoint, with an ultimate trust for her next of kin. In 1917 the wife died, and by her will, which exercised her power of appointment in the settlement, bequeathed all her property to her husband and appointed him her sole executor, and accordingly the question arose whether the husband, having both the life interest and the absolute reversion in the trust estate, could call for a transfer to himself of the trust securities. Counsel for the husband contended that, although the discretionary trust of the income was not restricted to the issue of his marriage with the settlor, there was a merger, and referred to *Webb* v. *Sadler* (1872, 8 Ch. App. 419) and *Re Radcliffe* (1892, 1 Ch. 227). He also submitted on the wording of this gift that the husband took an absolute interest with an inoperative condition against alienation, the words being "if he shall" assign and not until he shall assign.

NEVILLE, J., after stating the facts, said: I cannot hold there is a merger of the husband's life estate and reversion, for the simple reason that his two estates were not co-terminous. If I held there was a merger, I should be making him a present of the estate which comes into existence on the alienation of his life estate, and I should defeat the interests of his possible children on a re-marriage who would become entitled to the income between the dates of the defeasance clause coming into operation and of his death.—COUNSEL, *Beebee; Ramsbotham.* SOLICITORS, *Billing & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

(127) (1918) 62 Sol Jo 388

Re **HAZELDINE. PUBLIC TRUSTEE** *v.* **HAZELDINE.**

Eve, J. 30th January.

TRUSTEE—INVESTMENT—DISCRETION—POWER TO VARY—AS TRUSTEES "MAY THINK FIT"—UNAUTHORIZED INVESTMENTS—TRUST TO CONVERT—LIBERTY TO RETAIN.

A testator directed his trustees to sell and convert into money his estate "and invest the residue of the said moneys with power for my trustees from time to time to vary such investments as they may think fit." The estate included unauthorized investments.

Held, that the words "as they may think fit" applied only to the power to vary and not to the power to invest, but liberty was given to the trustees to retain the unauthorized investments for the duration of the war and six months afterwards.

By his will, made in 1914, the testator, after appointing his wife and his brother and the Public Trustee trustees, devised and bequeathed all his real and personal estate to the trustees upon trust that they should sell, call in and convert into money the same, and out of the moneys thereby produced to make certain payments, "and invest the residue of the said moneys, with power for my trustees from time to time to vary such investments as they may think fit," provided that if any differences should arise between the trustees as to making or varying any investment the testator's brother, F. J. H., should have the sole power of deciding. The testator then directed his trustees to stand possessed of the residuary trust funds upon trust to pay the income to his wife for life, and after her death to his daughter for life, and after her death to hold the *corpus* in trust for her children in equal shares, and in the event of her death without issue in the lifetime of her mother, then the trustees should hold the *corpus* in trust for his wife and his brother, F. J. H., in equal shares absolutely. The testator died in July, 1916, leaving his wife and daughter. His estate consisted of certain freeholds and numerous stocks and shares, some of which were unauthorized by law for the investment of trust funds. These unauthorized investments were all made by the testator, and owing to war conditions could not now be realized except at a serious loss. This summons was taken out to have it determined whether the trustees were entitled to invest in such securities as they might think fit, and whether they could retain the unauthorized investments.

EVE, J.—I think that the words "as they may think fit" apply only to the power to vary the investments and not to the power to invest. With regard to the question as to what are the powers of the trustees to invest under this will, I think that, where the Court has to deal with a testator who has directed an immediate conversion of his estate, with no power to postpone conversion or to retain investments, and has then given successive life interests in the proceeds of the conversion, there is a strong presumption that the testator did not intend his trustees to have power to invest his estate in any way they might think fit. Their powers of investment do not extend beyond the securities authorized by the Trustee Act, 1893, for the investment of trust funds. They will, however, have liberty to retain the unauthorized investments for the duration of the war and for six months afterwards, but without prejudice to the right of the trustees to realize if opportunity occurs. The tenant for life will be entitled to interest at four per cent. on the value of the unauthorized investments as from the death of the testator.—COUNSEL, *C. J. W. Farwell; Bradley Dyne; H. S. Preston.* SOLICITORS, *Hicklin, Washington, & Pasmore.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

(122) (1918) 62 Sol Jo 350.

King's Bench Division.

ASHTON & CO. *v.* THE LONDON AND NORTH WESTERN RAILWAY CO. Div. Court. 5th and 6th February.

CARRIER—GOODS—CARRIAGE BY LAND AND SEA—VALUE AND NATURE UNDECLARED—LOSS—NO EVIDENCE WHETHER LOSS BY LAND OR SEA—CARRIERS ACT, 1830 (11 GEO. 4 & 1 WILL. 4, C. 68), s. 1.

Goods were delivered to a railway company to be carried from London to Belfast. On the way the goods were lost, but no evidence was available to show how, when, or where the loss had occurred. The value and nature of the goods had not been declared under section 1 of the Carriers Act, 1830.

Held, that in order to relieve themselves from liabilty, the defendant company must show affirmatively that the loss had taken place on land, and not on the sea.

Appeal by the defendant company from a county court judge giving judgment for the plaintiffs. The plaintiffs delivered certain furs of the estimated value of £60 to the defendant railway company for conveyance from London to Belfast. The goods were received at the receiving office of the defendant company in London, but the plaintiffs made no declaration as to the value and nature thereof, as is required to be made by section 1 of the Carriers Act, 1830, in order that the carrier by land shall be liable for loss or damage to such goods as come within section 1 of that Act. The goods reached the departure platform at Euston Station, but from that point nothing further was shown as to what happened to them, but they were lost and were not delivered by the defendant company in Belfast. No evidence was produced to shew how, when, or where the loss took place. At the trial of the action the county court judge held that the defendant company were liable for the loss, and gave judgment for the plaintiffs. The defendant company appealed, contending that they were relieved from liability for the loss on land by section 1 of the Carriers Act, 1830, as the value and nature of the goods were not declared, and that the onus of proving that the loss occurred during carriage by sea was upon the plaintiffs, who had not discharged that onus. By the Carriers Act, 1830, s. 1, it is provided that no mail contractor . . . or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions following (that is to say): gold or silver coin . . . furs . . . contained in any parcel or package . . . when the value of such article or articles . . . shall exceed the sum of ten pounds, unless at the time of the delivery thereof at the office . . . of such common carrier . . . the value and nature of such article or articles shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package."

LAWRENCE, J.—This case raises a question upon the Carriers Act, and it is consequently of importance. The plaintiffs sue in respect of the loss of their goods, which they handed to the defendant company to be carried from London to Belfast. They were not declared within the first section of the Carriers Act, 1830, and consequently the plaintiffs cannot recover in case the goods were lost on land; but the only evidence about them is that they were taken as far as Euston, and the defendants are able to say nothing further on the subject. The contention for the defendant company was that the Carriers Act, 1830, under those circumstances afforded them complete protection, and that the plaintiffs must show affirmatively that the goods were lost at

sea; the onus being upon the plaintiffs to show the loss was at sea. That seems to be an erroneous contention; and the question is not one of onus of proof. The cause of action is breach of contract by non-delivery; and to escape liability the defendants must plead a good plea to that cause of action—a plea covering the whole cause of action. This was a contract of carriage by land and sea, and all the defendants pleaded was an answer in so far as the carriage was by land, without affirming or shewing that the goods were lost on land, and it is therefore a bad plea. The plea does not cover the cause of action. It is as though they said they carried the goods half-way. Supposing they pleaded, and shewed in fact, that they carried the goods as far as Holyhead, the land portion of the transit, that would not be any answer to the contract, which was to deliver the goods to Belfast; and the plea would have been a demurrable plea. The statute gives protection to a carrier by land; but it does not clothe the railway company with any special privilege because it is in certain parts of its duties a carrier by land. The company must shew, to escape liability, that the goods were lost on land, and within the protection of the statute. In *Pianciani* v. *The London & South Western Railway Co.* (1856, 18 C. B. 226) the plea set out a complete defence; here it does not. This plea of the Carriers Act, 1830, to a breach of contract for the carriage both by land and sea is no answer to the claim; and indeed the question of onus is satisfied on the part of the plaintiffs by saying "You did not deliver the goods." The breach was complete, and there was nothing further necessary for the plaintiffs to prove.

SHEARMAN, J., agreed. The real point was the construction of section 1 of the Carriers Act, 1830. According to the argument of the defendant company, the goods in question not being declared, the contract must be treated as at an end; but this was an untenable argument. The meaning of the section was that a carrier by land could protect himself by shewing that those goods were delivered to him without the declaration required by the Act, and that they were lost during the carriage by land. Here the defendant cannot prove the last part of it, and the plea was bad. Appeal dismissed.—COUNSEL, *Schiller*, K.C., and *Russell Davies*, for the appellants; *MacKinnon*, K.C., and *Kyffin*, for the respondents. SOLICITORS, *W. E. Tait; Ballantyne, Clifford, & Hett.*

[Reported by G. H. KNOTT, Barrister-at-Law.]

Solicitors' Cases.

In Re A SOLICITOR, HENRY HARBIDGE JENNENS.

C. A. No. 1. 21st February.

SOLICITOR—PROFESSIONAL MISCONDUCT—APPEAL AGAINST ORDER STRIKING OFF ROLLS—REDUCTION IN PUNISHMENT BY COURT OF APPEAL.

A solicitor was reported by a committee of the Law Society for professional misconduct, consisting in inducing a man, who called upon him for the purpose of being sworn to documents for obtaining letters of administration, to give him a retainer without informing him what it was, in keeping all the papers, and using them, with altered particulars and substituted sureties, to obtain a grant of administration. The charges having been proved, the Divisional Court struck him off the Rolls.

The Court of Appeal held the punishment was excessive, and reduced it to suspension for a period of five years.

Appeal from a decision of the Divisional Court (Darling, Avory and Sankey, JJ.) ordering a solicitor to be struck off the Rolls, on a report of a committee of the Law Society. The complainant was a Mr. J. Y. Holt, solicitor, of Bromsgrove, and the respondent a Mr. Henry H. Jennens, a commissioner for oaths, who was admitted in 1902, and carried on business in Kentish Town as Jennens and Jennens. The charges made against him were that one Walden called upon him for the purpose of being sworn to an affidavit and other papers which had been prepared by Mr. Holt, and which were necessary to enable Walden to obtain letters of administration with the will annexed to the estate of John Bennett, deceased; that though he knew that that was all for which Walden had called upon him, he took advantage of the latter's ignorance of legal formalities to obtain his signature to a form of retainer without informing him what it was; that he then recopied and altered the papers—viz., an Inland Revenue affidavit, the administrator's oath, and the administrator's bond—altering the name of the solicitor acting for the estate, reducing the value of the estate from £973 to £53 by omitting all particulars of the real estate, substituting the names of two sureties who were strangers to Walden for the original ones, and reducing the amount of the bond. Having done this, Jennens was charged with having refused to part with the will and papers, although required by Walden to do so, having lodged them at the Principal Probate Registry and obtained the grant of administration, which he declined to part with except on payment of his bill of costs. The committee reported that the solicitor had been guilty of misconduct. The charges were admitted at the hearing before the Divisional Court, but a plea *ad misericordiam* was put in. The Divisional Court made an order striking the solicitor off the Rolls. The solicitor appealed.

THE COURT varied the order and reduced the punishment.

SWINFEN EADY, L.J., said the appellant did not quarrel with the findings of fact, and upon those findings it could not be disputed that he deserved punishment. But it had been urged that the punishment was greater than the offence deserved. The case was that one Walden had called upon him with three documents, administrator's oath, bond and revenue affidavit, all incomplete, and awaiting his (Walden's) signature and oath. The solicitor took advantage of Walden's call to obtain a much wider retainer than he could possibly require, and then proceeded to act as solicitor to the estate and alter the forms. Two fresh sureties were obtained, and the affidavit for Inland Revenue materially altered by striking out of the schedule all reference to the real estate of the testator, making the gross value of the estate only £53 instead of £973. The real object of this alteration appeared to be as follows: It was not done so much to obtain any monetary benefit, but so long as the estate was kept small the duty payable would be slight, and the whole matter could be carried through without asking Walden for money. If the real estate had been included he would have had to apply for money, and the whole matter would have been discovered. The offence was a serious one; he had abused his position as a commissioner for oaths by obtaining the retainer. There was something to be said in extenuation of his conduct. It appeared from the evidence that he asked Walden if he had instructed a solicitor, and Walden said he had not. This was to a certain extent true, as the solicitor at Bromsgrove was acting for the family, who thought that Walden, as residuary legatee, should apply for administration, and Holt sent the papers to him telling him so. It was clear, however, that his conduct had been most unprofessional, and Darling, J., had said it amounted to fraud and forgery. Strictly speaking, it was not forgery, and the Divisional Court had been led, by regarding his conduct in obtaining the retainer as forgery, to inflict a punishment in excess of what would ordinarily have been imposed in such circumstances. The order of the Court would be varied, and the solicitor, instead of being struck off the Rolls, would be suspended from practice for five years.

BANKES, L.J., and EVE, J., concurred.—COUNSEL, *Lewis Thomas*, K.C., and *Walter Warren; Tyrrell Paine*. SOLICITORS, *E. & J. Mote; E. R. Cook.*

[Reported by H. LANGROND LEWIS, Barrister-at-Law.]

Mr. BONAR LAW, in written replies to Mr. Arnold, states that the total amount of property on which estate duty was received in the year 1913-1914—the last financial year for which the figure is available—was £398,006,479, of which £31,142,978 consisted of estates not over £1,000 in value. The amount of death duties paid into the Exchequer in the year ended 31st March, 1917, was made up as follows:—Estate duty (including settlement estate duty), probate (and inventory) duty, account duty and temporary estate duty, £25,180,000; legacy duty, £5,060,000; succession duty, £960,000; and corporation duty, £42,000—total, £31,232,000.

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 22nd February contains the following :—

1. The Household Coal Distribution Order, 1917, dated 21st January, fixing maximum prices of coal for the metropolitan coal distribution area from January, 1918, until further notice.

2. A Notice that Orders have been made by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, requiring two more businesses to be wound up, bringing the total to 507.

3. An Order of the Director-General of National Service, dated 20th February, further postponing the operation of the Ministry of National Service Order, 1917, as regards Ireland till 1st May, 1918.

4. Admiralty Notices to Mariners, dated 19th February (1), No. 266 of the year 1918 (cancelling 858 of 1917) :—Scotland, East Coast. Firth of Tay—Payment of Landing Fee by Pilots. [L] No. 263 of the year 1918 :—Scotland, East Coast. Moray Firth—Prohibited Anchorage.

The *London Gazette* of 26th February contains the following :—

5. An Order in Council, dated 26th February, further amending the Proclamation, dated the 10th day of May, 1917, and made under section 8 of the Customs and Inland Revenue Act, 1879, and section 1 of the Exportation of Arms Act, 1900, and section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited.

6. A Foreign Office (Foreign Trade Department) Notice, dated 26th February, 1918, that certain additions and corrections have been made in the list of persons and bodies of persons to whom articles to be exported to China may be consigned.

7. A Notice that Orders have been made by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, requiring three more businesses to be wound up, and prohibiting the Munich Re-Insurance Company from carrying on business, bringing the total to 510.

8. An Admiralty Notice to Mariners, dated 23rd February (No. 301 of the year 1918). England, East Coast—River Swale. Kingsferry Bridge—Regulations for Passage of Vessels to and from the River Medway.

[We have, for convenience, altered the form of this list. It does not include the Orders printed below.]

Foreign Office Notice.

GERMAN CONTRABAND LIST.

The following is a translation of an Ordinance of the German Government modifying this list :—

In further retaliation for the regulations issued by England and her Allies inconsistent with the Declaration of London of 26th February, 1909, I approve the application during the present war of the following modifications of the Prize Ordinance of 30th September, 1909, and of the supplements thereto dated 18th October, 23rd November, and 14th December, 1914, 18th April, 1915, 3rd June and 22nd July, 1916, and 9th January, 25th June, and 16th July 1917 :—

1. Article 21 [List of absolute contraband] Section 3, add : "paper and cardboard of every kind and in every form and the refuse thereof; wood-pulp and cellulose."

2. In Article 27 [List of goods which cannot be declared contraband] omit Section 5.

This Ordinance comes into force on the day of its promulgation.

Given at Grand Headquarters,
18th January, 1918.
(Signed) *Wilhelm.*
(Countersigned) *von Capelle.*

(The complete German list of contraband, which had not undergone any further modification until the issue of the above Ordinance, was published in the *London Gazette* of 4th August, 1917, see 61 SOLICITORS' JOURNAL, p. 678). [*Gazette*, 26th February.

20th February.

Admiralty Orders.

ADMIRALTY NOTICE TO MARINERS.
No. 283 of the year 1918.
IRISH CHANNEL—NORTH CHANNEL.
Restriction of Navigation.

Former Notice.—No. 126 of 1918 [*ante* p. 293]; hereby cancelled.

Mariners are hereby warned that, under the Defence of the Realm (Consolidation) Regulations, 1914, the following regulations have been made by the Lords Commissioners of the Admiralty and are now in force :—

1. Navigation and use of the undermentioned area is entirely prohibited to all ships and vessels of every size and nationality :—

The area is bounded as follows :
On the North-West by a line joining (*a*) and (*b*) :
(*a*) Lat. 55° 24½′ N., Long. 6° 15¾′ W.
(*b*) Lat. 55° 31′ N., Long. 6° 02′ W.
On the South-East by a line joining (*c*) and (*d*) :
(*c*) Lat. 55° 13½′ N., Long. 5° 30′ W.
(*d*) Lat. 55° 02½′ N., Long. 5° 40′ W.
On the South-West by a line joining (*a*) and (*d*) :
On the North-East by a line joining (*b*) and (*c*)

2. Rathlin Sound is closed to all traffic.

Note.—This Notice is a revision of the former Notice quoted above.

21st February. [*Gazette*, 26th February.

Army Council Order.

THE BOOT MANUFACTURERS (TRANSFER OF MACHINERY) ORDER, 1918.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council hereby order as follows :—

1. No person, the business carried on by whom consists in the manufacture or repair of Boots or Shoes, shall, without a permit issued by or on behalf of the Director of Army Priority, sell or deliver to any other person any machinery or parts of machinery capable of being used for the manufacture or repair of Boots or Shoes.

2. This Order may be cited as the Boot Manufacturers (Transfer of Machinery) Order, 1918. [*Gazette*, 19th February.

19th February.

Ministry of Munition Order.

THE COPPER SULPHATE ORDER, 1918 [*ante*, p. 383].

Erratum.

The words "not prompt cash prices" which appear in the second line of paragraph No. 2 of the above Order, on page 2069 of the *London Gazette* dated 15th February, 1918, should read "net prompt cash prices." [*Gazette*, 22nd February.

22nd February.

Board of Trade Orders.

THE GAS (USE IN MOTOR VEHICLES) LOCAL PROHIBITION ORDER, 1918 [*ante* p. 313].

The Board of Trade hereby give Notice, pursuant to the provisions of the Gas (Use in Motor Vehicles) Local Prohibition Order, 1918, that on and after the 1st day of March, 1918, and until further notice, the use of gas, manufactured or supplied by the gas undertakings referred to in the Schedule to this Notice, for the purpose of driving motor vehicles is prohibited.

No person or company who is supplying or who is under contract to supply gas to any of the undertakings referred to in the Schedule may sell or supply gas after the above date for the purpose of driving motor vehicles.

THE SCHEDULE.

The Sheffield Gas Company.
The Stockport Corporation.
The Stockton-on-Tees Corporation.
The Portsea Island Gas Light Company.
The Town of Dudley Gas Light Company.
The Tottenham District Light, Heat and Power Company.
[*Gazette*, 26th February.

22nd February.

Food Orders.

THE LOCAL DISTRIBUTION (MISUSE OF DOCUMENTS) ORDER, 1918.

In exercise, &c., the Food Controller hereby orders that except under the authority of the Food Controller the following regulations shall be observed by all persons concerned :—

1. *Offences.*]—Where any Food Committee with the approval of the Food Controller have made or propose to make arrangements for regulating the distribution or consumption of any food within their area (whether by means of a scheme under the Food Control Committees (Local Distribution) Order, 1917, or otherwise), and forms of application, cards, vouchers, authorizations or other documents are issued under the authority of the Committee or the Food Controller for the purpose of those arrangements, a person shall not

(*a*) knowingly make or cause to be made or connive at the making of any statement which is false in any material particular with a view to obtaining any food under such arrangement or with a view to obtaining any such form of application, card, voucher, authorization or other document;

(*b*) forge or without lawful excuse alter any application under any such arrangement or any such card, voucher, authorization, or other document;

(*c*) falsely represent himself to be a person to whom any such application, card, voucher, authorization or other document applies;

(*d*) retain any application, card, voucher, authorization or other document when he has no right to retain it or fail to comply with any directions issued by lawful authority with regard thereto; or

(e) make or knowingly have in his possession any form of application, card, voucher, authorization or other document marked so as to resemble or colourably imitate any such form of application, card, voucher, authorization or other document, either in blank or wholly or partly completed, not being a form of application, card, voucher, authorization or other document issued under lawful authority.

2. *Information to be confidential.*]—A member of or person employed by a Food Committee or any other person whose duty it is to deal with any application, card, voucher, authorization, or other document issued for the purposes aforesaid shall not without lawful authority communicate to any person any information acquired by him from any such application, card, voucher, authorization, or other document.

3. *Interpretation.*]—For the purposes of this Order, the expression "Food Control Committee" shall mean a Committee appointed in pursuance of the Food Control Committees (Constitution) Order, 1917.

4. *Penalty.*]

5. *Title.*]—This Order may be cited as the Local Distribution (Misuse of Documents) Order, 1918.

2nd February.

THE SEED POTATOES (1917 CROP) PRICES ORDER, 1918.

In exercise, &c., the Food Controller hereby orders that the Seed Potatoes (1917) Crop Order, 1917 (hereinafter called the Principal Order) shall be amended as follows:—

1. In Clause 2 of the Principal Order, there shall be inserted after the definition of Class III. the following words:—"Class IV. shall mean potatoes of the varieties 'Myatt's Ashleaf Kidney,' 'Duke of York,' 'Sharps Express,' 'Eclipse,' 'British Queen,' 'Royal Kidney,' and 'King Edward' grown in England or Wales in the year 1917, other than potatoes belonging to Class III. which will pass through a riddle of 1¾ inch mesh, and will not pass through a riddle of 1½ inch mesh."

2. Clause 3 of the Principal Order shall be amended by the omission of the word "and" before the words "Class III." and the addition of the words "and Class IV." after the words "Class III."

3. The first Schedule of the Principal Order shall be amended by the addition of the following words at the end thereof:—

"The highest authorized selling price per stone for potatoes of the varieties 'Sharps Express,' 'Eclipse,' 'Myatt's Ashleaf Kidney' and 'Duke of York' belonging to Class IV. shall be 2s. 6d."

4. The Second Schedule of the Principal Order shall be amended by the addition of the following words: "No sum may be added under Clause 6 on the sale of any potatoes belonging to Class IV."

5. Copies of this Order hereafter to be printed under the authority of His Majesty's Stationery Office shall be printed with the additions and omission provided for by this Order and the Principal Order shall hereafter take effect as if it had been originally made with such additions and omission.

6. This Order may be cited as the Seed Potatoes (1917 Crop) Prices Order, 1918.

4th February.

THE OATMEAL (RESTRICTION) ORDER, 1918.

In exercise, &c., the Food Controller hereby orders that except under the authority of the Food Controller, the following regulations shall be observed by all persons concerned:—

1. *Oatmeal, etc., to be used only for human food.*]—No person shall on or after the 10th day of February, 1918, use any oatmeal, oat flour, groats, rolled oats or flaked oats except as human food or in the manufacture of articles suitable for human food or use any article containing or manufactured from any oatmeal, oat flour, groats, rolled oats or flaked oats except as human food.

2. *Exception.*]—This Order shall not apply to any oatmeal, oat flour, groats, rolled oats or flaked oats which on the 10th February, 1918, had been so treated as to be unfit for human food or to any oatmeal, oat flour, groats, rolled oats or flaked oats or to any articles containing or manufactured from them which are or may become unfit for human food.

3. *Damaging oatmeal, etc.*]—No person shall on or after the 10th day of February, 1918, damage or permit to be damaged or treat or permit to be treated any oatmeal, oat flour, groats, rolled oats or flaked oats or any article containing or manufactured from oatmeal, oat flour, groats, rolled oats or flaked oats so as render the same less fit for the purpose for which under this Order they are reserved.

4. *Samples.*]—Any person authorized by the Food Controller or any Food Committee may take samples of any article which he has reason to suspect is being used contrary to the terms of this Order.

5. *Determination of questions.*]—If any question shall arise whether any article mentioned in this Order is unfit for the purpose of human food, such question may be referred for determination to any person authorized in that behalf by the Food Controller or by a Food Committee.

6. *Interpretation.*]—For the purposes of this Order the expression "Food Committee" shall mean a Food Control Committee constituted in pursuance of the Food Control Committees (Constitution) Order, 1917, and the Food Control Committee appointed for Ireland by the Food Controller.

7. *Penalty.*]

8. *Title.*]—This Order may be cited as the Oatmeal (Restriction) Order, 1918.

7th February.

THE OATS PRODUCTS (RETAIL PRICES) ORDERS, 1917.

General Licence.

The Food Controller hereby authorizes every person dealing by retail in Oat Flour, Oatmeal, Rolled Oats, Flaked Oats or other like products of Oats, to charge, in addition to the prices authorized by the above Orders, on a sale in any part of Scotland other than the Mainland, a sum at the rate of not more than ½d. per lb. or such less sum as may be determined by the Divisional Food Commissioner for that part of Scotland within which the sale takes place.

7th February.

Trading Stocks and the War.

A statement issued by the Ministry of Reconstruction refers to what many manufacturers regard as the serious risk of providing themselves with materials for the resumption of peace-time production on a full scale. They fear that materials bought at the greatly inflated prices which most things have attained will, with the coming of peace, fall in price, either immediately or gradually, and thus involve the holders in loss.

The Minister of Reconstruction has been informed that fear of this contingency tends to cause reluctance on the part of manufacturers and traders to acquire more materials, in readiness for the coming of peace, than will barely tide them over the contracts to which they are committed, and that they are leaving until a later date further purchases for the making of articles for stock. Dr. Addison, recognizing that this is calculated to retard the attainment, after peace is declared, of maximum national productiveness, has appointed a committee of the Ministry of reconstruction to go closely into the matter. It will be known as the Committee on Financial Risks Attaching to the Holding of Trading Stocks, and its members are:—

Mr. F. C. Harrison, C.S.I. (chairman), retired Indian Civil Servant.
Mr. Cecil Budd, of the Ministry of Munitions.
Mr. John E. Davison, trade union official.
Mr. G. Binney Dibblee, newspaper manager and author.
Mr. Ernest Debenham, general merchant and manufacturer.
Mr. A. W. Flux, of the Board of Trade.
Mr. A. J. Hobson, ex-Master Cutler; member of the Advisory Committee of Board of Trade.
Mr. Wm. McLintock, well-known Glasgow accountant.
Mr. J. C. Stamp, D.Sc., C.B.E., of the Board of Inland Revenue.
Sir Richard Vassar-Smith, chairman, Lloyds Bank.
Secretary, Mr. R. C. Smallwood, Ministry of Reconstruction, 2, Queen Anne's-gate-buildings, S.W.

The duty of this committee will be:—"To inquire and to report as to any measures which could be adopted with a view to securing that manufacturers should be financially in a position to hold stocks after the war, and that reasonable safeguards are established to prevent serious financial losses as a result of possible depression following on a period of great inflation in respect of stocks of materials required for industry."

As the subject of inquiry closely concerns other Government Departments and other reconstruction committees, representatives of these Departments and committees have been incorporated. The subject has the closest relationship with that of the Committee on the Provision of Financial Facilities for Trade after the War, of which Sir Richard Vassar-Smith is chairman and Mr. R. C. Smallwood secretary, and the assistance of these gentlemen on this committee will assure that there is co-operation of effort and no overlapping of duties.

Mr. Cecil Budd is a representative of the Central Committee on Materials Supply; Mr. John E. Davison, of the Ironfounders' Society, will express the opinions of Labour; Dr. Stamp and Mr. Flux will represent the Board of Inland Revenue and the Board of Trade respectively.

Any body or association of important trade interests, which wishes to have an opportunity of stating a case or of presenting its views on the questions being studied by the committee, is requested to communicate with the secretary.

Amendment of the Companies Acts.

The President of the Board of Trade has appointed the Rt. Hon. Lord Wrenbury (Chairman), Mr. Arthur S. Comyns Carr, Sir Frank Crisp, Bt., Mr. George Welsh Currie, M.P., Mr. F. Gaspard Farrer, Mr. Frank Gore-Browne, K.C., Mr. James Martin, the Hon. Algernon H. Mills, Mr. Richard David Muir, Mr. Christopher T. Needham, M.P., Mr. Henry A. Payne, C.B., Sir Owen Philipps, K.C.M.G., M.P., Sir William Plender, G.B.E., Mr. Owen C. Queckett, and Mr. Andrew Wilson Tait to be a Committee to inquire what amendments are expedient in the Companies Acts, 1908-17, principally having regard to the circumstances arising out of the war and out of the developments likely to arise on its conclusion, and to report to the Board of Trade and to the Ministry of Reconstruction. The Secretary to the Committee is Mr. W. W. Coombs, M.B.E., and all communications intended for the Committee should be addressed to him at 55, Whitehall, London, S.W. 1.

Pre-War Contracts.

The report of the Committee appointed by the Board of Trade to consider the position of British manufacturers and merchants in respect of pre-war contracts, under the chairmanship of Lord Buckmaster, was issued on 14th February as a White Paper [Cd. 8975]. It states, say the *Times*, that, in addition to hearing forty-six witnesses, the Committee were supplied with written answers to a set of questions, the material obtained covering about 600 contracts and showing that the extent of the interference with trade conditions is widespread, so that unless good will and forbearance are shown by parties who will have the right to claim damages grave difficulties may arise.

Of the contracts within the terms of reference, approximately half were between British subjects both of whom traded in the United Kingdom, and half were between a British subject or firm and another party in an Allied or neutral country. Though their inquiry has revealed the existence of many cases of difficulty, the Committee are, on the whole, surprised that they are not still more numerous and more uniformly distributed.

The Committee do not recommend the cancellation of pre-war contracts. They point out that many of the contracts are made with persons who are not British subjects, and cancellation might prove disastrous to British credit, the maintenance of which is essential to secure rapid and complete recuperation after the loss and exhaustion consequent on the war. They feel that the sanctity of contract has been in the past the mainstay of British credit, and that anything likely to impair that credit is jealously to be avoided. The Committee hold the view strongly that no isolated legislation by any single country can rescue international commercial relations from the confusion into which they have been thrown by the war. Some common basis, therefore, for settling the difficulties should be established as soon as possible by the various Governments. If, in regard to foreigners, some form of international convention, or, in regard to the rest of the Empire, some form of Imperial agreement, could provide for a scheme for the mutual adjustment or modification of contracts, the grounds of their objection would disappear. The Committee are unable to recommend further legislative interference with home contracts in the absence of more convincing evidence that the existing law has been tried and has failed.

They do not recommend that compensation should be granted out of Government funds, except where loss is due to direct interference by the Government. In certain of such cases the Committee think that some allowance might reasonably be made, but that it should be strictly in the form of indemnity, and not in that of compensation. No payment for loss of profit should be paid out of the public purse.

A Food Survey Board.

The Food Controller has decided, in view of the introduction of compulsory rationing, to discontinue the propaganda for voluntary economy. This decision, together with the necessity of correlating the consumption of food by all classes, has made it necessary to reorganize the work of the Ministry, particularly that of the Food Economy Division.

Sir Arthur Yapp having resigned his position as Director of Food Economy, Lord Rhondda has decided that the work hitherto done by the Economy Section shall be allotted to four new branches of the Ministry, as follows:—

(1) Public Services Food Consumption Branch—Director, Major G. Henderson.
(2) National Kitchens Branch.—Director, Mr. C. F. Spencer.
(3) Public Catering Branch.—Director, Mr. A. Towle.
(4) Educational Branch.—Director, Professor E. H. Starling, F.R.S.

The co-ordination and control of the policy of these Departments will be exercised by a Board to be called the Food Survey Board, of which Lieutenant-Colonel A. G. Weigall, M.P., will be chairman. The Directors of the Departments already mentioned will be members of the Board, and pending the introduction of a national rationing scheme on a uniform basis, representatives of local authorities will be added, in order to secure uniformity of practice in regard to scales of rations and priority of supply.

Societies.

The Bar Council.

Mr. T. Hollis Walker, K.C., and Mr. Henry Maddocks have been appointed members of the Bar Council in the place of Mr. Parfitt, K.C., appointed a County Court Judge, and Mr. H. W. Disney, appointed a Metropolitan Police Magistrate.

The Union Society of London.

The thirteenth meeting of the Society was held in the Middle Temple Common Room on Wednesday, 27th February. The motion before the House was: "That, in the opinion of this House, the Chancellorship should no longer be a political appointment." Opener: Mr. R. Holt. Opposer: Mr G. F. Kingham. The motion was carried.

The Birmingham Law Society.

The following are extracts from the report of the committee of the above society for the year ended 31st December, 1917:—

Officers and Committee.—Mr. Arthur L. Lowe was re-elected to the office of president, and Mr. J. A. Marigold was elected vice-president immediately after the last annual meeting. Mr. L. Arthur Smith was re-elected honorary secretary and treasurer, and, being still on active service, your committee reappointed Mr. Arthur Musgrove to continue to act in his absence. Mr. A. H. Coley has continued to represent the society as an ordinary member and Mr. R. A. Pinsent as an extraordinary member on the Council of the Law Society. Mr. Pinsent was also elected in July vice-president of the Law Society for 1917-18. Mr. Coley has continued a member of the committee appointed by the Lord Chancellor to consider and report on the existing arrangements and distribution of the County Court Circuits, Districts, and Court Centres on which he was appointed last year.

Members.—The membership o fthe society shews an increase of two members as compared with last year. One member has resigned, seven have died, and nine new members have been elected. The number on the register on the 31st Decembr, 1917, was 364. Fifteen barristers have during the year subscribed for the privilege of using the library. The subscriptions of forty-six members and five barristers on active service, amounting to £74 0s. 6d., have been remitted in accordance with the resolution of the committee passed at the commencement of the war. Your committee record with deep regret the death of Mr. W. M. Smythe, who had been a member of the society since 1877, and had served on the committee from 1896 to 1911. Your committee also regret to have to report the death of the following members, viz.:—Lieutenant H. Birkett Barker, Lieutenant R. T. Boddington, Lance-Corporal M. S. Corby, and Lieutenant H. J. Goodwin (whose names will be found in the list of casualties below), and Mr. E. C. Fowke. Your committee have pleasure in recording here that Mr. A. D. Brooks, who is a member of this society, was re-elected Lord Mayor of Birmingham in November, and has been gazetted C.B.E. in the new Order of the British Empire; also that Sir E. Hiley, who retired from the Committee last year, has been made a K.B.E. in the same Order.

The War.—The war has continued to deplete the ranks of the legal profession in Birmingham as in other places. The number of local solicitors on active service has considerably increased during the year, and so far as it has been possible to ascertain the actual number it would appear that 120 solicitors and forty-three articled clerks, from Birmingham and the immediate neighbourhood, are now serving with the colours.

Your committee very much regret to record the following casualties during the past year:—

Lieut. H. Birkett Barker, Royal Garrison Artillery (died of wounds).
Lieut. R. T. Boddington, Royal Garrison Artillery (killed in action).
Lance-Corporal M. S. Corby, 13th Batt. Worcestershire Regt. (died of wounds).
Lieut. S. J. Ellison, 5th Batt. South Staffordshire Regt., articled to Mr. J. Ellison (killed in action).
Lieut. H. J. Goodwin, Royal Garrison Artillery (killed in action).
Lieut. F. A. Lavender (Walsall), South Staffordshire Regt. (killed in action).
Captain S. P. Smith (Walsall), South Staffordshire Regt. (killed in action).

Your committee note with pride the following military distinctions which have been conferred during the year upon solicitors and articled clerks of this district:

Lieut. W. N. Arnold, R.F.A. Awarded the Military Cross.
Major Cecil Crosskey, A.S.C. Twice mentioned in despatches and promoted Lieut.-Col.
Lieut. (Temp. Captain) C. A. A. Elton, Royal Warwickshire Regt. Awarded the D.S.O.
Lieut. W. D. Featherstone, R.F.A., articled to Mr. H. B. Carslake. Awarded the Military Cross.
Captain (Acting Lieut.-Colonel) W. C. C. Gell, M.C., Royal Warwickshire Regt. Awarded the D.S.O.
Captain C. W. Holcroft, 8th Worcestershire Regt. Awarded the D.S.O.

Lieut. (Acting Captain) P. W. Hollick, Royal Warwickshire Regt. Mentioned in despatches.

Lieut.-Colonel E. Martineau, C.M.G., 83rd Provl. Batt. Oxford and Bucks. Light Infantry. Gazetted as mentioned for valuable services.

Lieut. H. D. Price, 22nd Mounted Brigade, E.E.F. Awarded the Military Cross.

Lieut. P. J. Slater, 6th Batt. South Staffordshire Regt. Mentioned in despatches.

Lieut.-Colonel F. M. Tomkinson, 7th Batt. Worcestershire Regt. Awarded Bar to D.S.O.

Major W. S. Tunbridge, 2nd South Midland Brigade, R.F.A. Gazetted as mentioned for valuable services.

Centenary.—On 3rd January, 1918, the society completed 100 years of existence. The hope expressed in last year's report that the war would be over by that date has not been fulfilled, and the committee, therefore, do not propose to hold any celebration of the event, but the acting hon. secretary has written a short history of the society, a print of which is circulated with this report.

Birmingham Board of Legal Studies.—The board has continued to conduct the classes for law students and issued a report at the close of their financial year on 31st August last, a copy of which will be found in Appendix B. The board have carried on the work under great disadvantages, owing to the large decrease in the grant made by the Law Society and the small number of articled clerks attending the lectures, but have determined to carry on the classes.

Belgian Lawyers Relief Fund.

The Belgian Lawyers Aid Committee gratefully acknowledge the following donations received in response to their fourth appeal:—

	£	s.	d.
Sir A. Norman Hill (*third donation*)	50	0	0
Robert F. Norton, Esq. (*third donation*)	21	0	0
R. W. Cooper, Esq. (*third donation*)	20	0	0
Ernest Dunkels, Esq. (*third donation*)	10	10	0
The Lord Chancellor (*fourth donation*)	10	10	0
Owen Thompson, Esq. (*fourth donation*)	10	10	0
Messrs. Bird & Bird (*third donation*)	10	10	0
F. Gore Browne, Esq., K.C. (*third donation*) ...	10	10	0
J. H. Stamp, Esq. (*third donation*)	10	10	0
Anonymous	10	6	0
H. C. King, Esq. (*fourth donation*)	5	5	0
A. C. Clauson, Esq., K.C. (*fourth donation*) ...	5	5	0
Capt. the Baron A. Prolumo (*second donation*) ...	5	5	0
Joseph Hood, Esq. (*third donation*)	5	5	0
Arthur T. Cummings, Esq. (*second donation*) ...	5	5	0
Travers Humphreys, Esq. (*fourth donation*) ...	5	5	0
Sir Douglas Owen, K.B.E. (*second donation*)	5	0	0
John W. Green, Esq. (*second donation*)	5	0	0
H. H. Bothamley, Esq. (*third donation*)	5	0	0
W. S. Burton, Esq. (*fourth donation*)	5	0	0
Anonymous (*second donation*)	5	0	0
The Hon. Mr. Justice Sargant (*second donation*) ...	5	0	0
John K. Rutter, Esq. (*third donation*)	5	0	0
Macdonald Beaumont, Esq. (*second donation*) ...	5	0	0
Messrs. Wm. A. Crump & Son (*second donation*) ...	5	0	0
Herbert T. Wade, Esq. (*third donation*)	5	0	0
C. G. Brown, Esq. (*fourth donation*)	3	7	3
W. H. Griffith, Esq. (*second donation*)	3	3	0
His Honour Judge Mackarkness (*fourth donation*) ...	3	3	0
The Hon. J. D. Fitzgerald, K.C. (*second donation*) ...	3	3	0
H. D. Roome, Esq. (*second donation*)	3	3	0
W. Fred Verral, Esq. (*second donation*)	3	3	0
A. J. M. Duncan, Esq. (*fourth donation*)	3	0	0
Cyril Eade, Esq. (*second donation*)	2	2	0
C. Stafford Crossman, Esq. (*third donation*)	2	2	0
Messrs. Capel, Cure & Ball (*third donation*)	2	2	0
C. A. Russell, Esq., K.C. (*third donation*)	2	2	0
F. H. Stapley, Esq. (*third donation*)	2	2	0
Messrs. Morgan, Price & Co. (*third donation*)	2	2	0
T. W. Bischoff, Esq. (*fourth donation*)	2	2	0
A. Copson Peake, Esq. (*second donation*)	2	2	0
Messrs. Mills & Reeve (*second donation*)	2	2	0
A. W. Kerly, Esq., J.P. (*third donation*)	2	2	0
J. P. Edwards, Esq. (*third donation*)	2	2	0
Major C. D. Munton (*second donation*)	2	2	0
E. W. Kingdon, Esq. (*third donation*)	2	2	0
C. M. Ware, Esq. (*third donation*)	2	2	0
Ernest J. Schuster, Esq., K.C. (*second donation*) ...	2	2	0
F. W. Hall, Esq. (*fourth donation*)	2	2	0
His Honour Judge Lindley (*fourth donation*) ...	2	2	0
Edward Bond, Esq. (*second donation*)	2	2	0
Th. H. Terry, Esq. (*fourth donation*)	2	2	0
Messrs. Kennedy, Ponsonby & Co. (*second donation*)	2	2	0
J. Elliott Mallinson, Esq. (*third donation*)	2	2	0
Philip Allison, Esq. (*third donation*)	2	2	0
Russell Jolly, Esq. (*third donation*)	2	2	0
Frank Chapman, Esq. (*second donation*)	2	2	0
John Slatter, Esq. (*second donation*)	2	2	0
A. Brand, Esq. (*second donation*)	2	2	0
W. M. Woodhouse, Esq. (*third donation*)	2	2	0
J. W. Rudd, Esq. (*fourth donation*)	2	2	0
William Barnard, Esq. (*third donation*)	2	2	0
Charles B. Harris, Esq. (*third donation*)	2	2	0
W. H. Norton, Esq. (*second donation*)	2	2	0
Messrs. Royds, Rawstorne and Co. (*third donation*)	2	2	0
F. T. C. Tomlin, Esq., K.C. (*third donation*) ...	2	2	0
R. D. Muir, Esq., K.C. (*fourth donation*)	2	2	0
K. C. Irvine, Esq. (*second donation*)	2	0	0
T. H. F. Lapthorn, Esq. (*fourth donation*)	2	0	0
T. H. Hiscott, Esq. (*fourth donation*)	2	0	0
J. R. Symonds, Esq. (*third donation*)	2	0	0
Charles Paice, Esq. (*fourth donation*)	2	0	0
Messrs. Jessop & Gough (*third donation*)	1	1	0
Messrs. Thos. Priestman & Sons (*third donation*) ...	1	1	0
Messrs. C. Richards & Sons (*third donation*)	1	1	0
Major J. W. Smith (*second donation*)	1	1	0
Joseph T. Jackson, Esq. (*third donation*)	1	1	0
H. T. Mander, Esq. (*third donation*)	1	1	0
J. T. Muspratt, Esq. (*fourth donation*)	1	1	0
Henry Woolcott, Esq. (*fourth donation*)	1	1	0
Messrs. Turner & McCandlish (*fourth donation*) ...	1	1	0
Messrs. Tunbridge & Co. (*third donation*)	1	1	0
Geo. C. Kent, Esq. (*second donation*)	1	1	0
Kighley A. Hough (*third donation*)	1	1	0
R. A. Mervyn Hill, Esq. (*second donation*)	1	1	0
E. W. Kendall, Esq. (*second donation*)	1	1	0
W. Arnold Linnell, Esq. (*fourth donation*)	1	1	0
A. G. S. Robertson, Esq. (*third donation*)	1	1	0
N. H. Arnison, Esq. (*fourth donation*)	1	1	0
A. A. Blake, Esq. (*fourth donation*)	1	1	0
J. T. Perry, Esq. (*third donation*)	1	1	0
Sydney E. Preston, Esq. (*second donation*)	1	1	0
D. F. Cooke, Esq. (*second donation*)	1	1	0
K. E. T. Wilkinson, Esq. (*second donation*)	1	1	0
Clitherow Smith, Esq. (*second donation*)	1	1	0
F. H. Partridge, Esq. (*fourth donation*)	1	1	0
Thomas Bury, Esq. (*fourth donation*)	1	1	0
Frederick G. Allen, Esq. (*third donation*)	1	1	0
W. W. A. Tree, Esq. (*second donation*)	1	1	0
W. C. Beasley Robinson, Esq. (*fourth donation*) ...	1	1	0
J. W. Hassall, Esq. (*fourth donation*)	1	1	0
A. O. Davies, Esq. (*second donation*)	1	1	0
Messrs. Potter, Sandford & Kilvington (*third donation*)	1	1	0
Myer S. Nathan, Esq. (*third donation*)	1	1	0
W. Arthur Weightman, Esq. (*third donation*) ...	1	1	0

George A. Herington, Esq. (*second donation*)	...	1	1 0
Wm. Hy. Powell, Esq. (*second donation*) ...	...	1	1 0
His Honour Judge Ellicott (*third donation*)	...	1	1 0
J. Ernest Lloyd, Esq. (*third donation*)	...	1	1 0
Messrs. Lamb & Stringer (*third donation*) ...	...	1	1 0
William Clifton, Esq. (*third donation*)	...	1	1 0
		£389	19 3

Christianity and the League of Nations.

The following letter appeared in the *Times* of 23rd February:—

SIR,—We, the signatories of this document, belonging to various Christian bodies, have noted with the greatest satisfaction the prominent place given by the President of the United States and by successive Prime Ministers and Foreign Secretaries of our own country to the proposal of a League of Nations. The idea has also, as was to be expected, won wide support among official representatives of Christian communions—*e.g.*, in the Pope's appeal to the Powers last summer and in the recent Convocation of Canterbury. But more is yet needed to make manifest and effective the full force of Christian conviction in its favour, still largely latent but capable of being evoked, if only the vital import of the idea be brought forcibly home to Christian people at large. In the name, then, of the Prince of Peace, we would call on them duly to consider and openly to welcome the idea of such a league as shall safeguard international right and permanent peace, and shall also have power in the last resort to constrain by economic pressure or armed force any nation refusing to submit to arbitration or international adjudication, in the first instance, any dispute with another tending to war.

We believe that a new system of international law and authority, acting through an inclusive "League of Nations" in place of any "balance of power," is the condition of a just and lasting peace, particularly as it affords means whereby the fresh demands of national life, as they arise, can be adjudicated upon and equitably satisfied. Accordingly we hold it to be of the utmost importance—as President Wilson has just emphasized afresh—that such a league should not merely be contemplated as the more or less remote outcome of a future settlement, but should be put in the very forefront of the peace terms as their presupposition and guarantee. Whether it be or be not practicable, without any slackening of the energy with which the war must be waged, to make a beginning upon the league, as regards the Allies and the neutrals, even before the Peace Conference, we do not venture to decide, though we think this course has much to commend it. But we are sure of the pressing need there is, here and now, of giving the "League of Nations" the backing of an organised body of strong conviction; sure also that this task offers to the Christian consciousness an opportunity to make its own spirit felt in national policy such as has not occurred heretofore since the outbreak of this war.

RANDALL CANTUAR.
EDW. WINTON.
C. OXON.
HUBERT M. SOUTHWARK.
THEODORE PETRIBURG.
JAMES COOPER, Moderator.
W. B. SELBIE.
J. SCOTT LIDGETT.
F. B. MEYER.
J. ESTLIN CARPENTER.
ALEX. CONNELL.
C. PLATER, S.J.
HENRY BENTINCK.
PARMOOR.
ARTHUR HENDERSON.
GEORGE LANSBURY.
ALBERT MANSBRIDGE.
A. S. PEAKE.
T. F. ROBERTS.

Deposed Sovereigns and Jurisdiction.

We are obliged to the Editor of *International Law Notes* for the following short report of a recent interesting American case, which has been received from Dr. C. H. Huberich, at New York:—

A foreign sovereign who has abdicated or who has been deposed is not entitled to the privileges of extraterritoriality accorded to reigning sovereigns. In the case at bar, suit was instituted by the plaintiff company against the former Czar of Russia. A firm of attorneys as *amici curiæ* applied to be heard for the purpose of suggesting the lack of jurisdiction. In denying the application to vacate the warrant of attachment issued against the property of the ex-Czar within the jurisdiction, the court (per Benedict, J.) said: "It is beyond doubt that the courts of this State are without jurisdiction of an action against the Government of a foreign country or State; but that does not prevent an action being maintained against one who has vacated or been removed from the head of the Government. While the kingly office lasts he is exempt. When it terminates he ceases to be sacrosanct, and becomes an individual subject to the same laws as other mortals, and may be sued upon his personal contracts, even though made while still a sovereign." —Marine Transport Service Corporation *v.* Romanoff (N.Y. Supreme Court, 31st January, 1918).—58 N.Y. Law Jour. 1434.

Obituary.

Qui ante diem periit,
Sed miles, sed pro patria.

Captain Lionel P. Clay.

CAPTAIN LIONEL PILLEAU CLAY, Yeomanry, who was killed on 17th February, was the eldest son of Mr. and Mrs. J. W. Clay, of Rastrick, Yorks. Born in 1880, he was educated at Harrow, where he took an entrance scholarship, and became head of the school in 1898, and also Botfield scholar. He entered Balliol in the following year, and took a first class in Moderations and his degree in 1905. He was called to the Bar at the Inner Temple in 1906, and in the same year obtained a commission in the Yeomanry. On the outbreak of war he was mobilised with his regiment, and proceeded abroad. He married Muriel, daughter of Mr. and Mrs. Ralph Walker, of Scotnish, Lochgilphead, and leaves a son and two daughters.

Second Lieutenant Charles Coburn.

SECOND LIEUTENANT CHARLES COBURN, K.R.R.C., who was reported missing on 31st July, 1917, is now officially presumed to have been killed, in his thirty-third year. He was the youngest son of Mr. and Mrs. Henry I. Coburn, of 40, King's-gardens, N.W. 6, and was educated at St. Paul's School and Merton College, Oxford. He was in the first Rugby football fifteen both at school and at Merton, and also played several times for Oxford University in trial games. At Oxford he obtained the B.A. and B.C.L. degrees, and was admitted a solicitor in 1909, and practised in London at 54, Leadenhall-street. Subsequently he was appointed to the staff of the Royal National Pension Fund for Nurses. After the outbreak of war he served for some time in the Metropolitan Special Constabulary. He enlisted under the Derby scheme in December, 1915, and in October, 1916, was accepted for training by the Inns of Court O.T.C. He obtained a commission in the K.R.R.C. at the end of April, 1917, crossing to France on 2nd July. His adjutant writes of him as "leading his men most gallantly to the attack," and "showing himself a gallant, reliable and devoted officer." Second Lieutenant Coburn married in 1914 Dorothy Lindo Henry, who, with two sons, survives him.